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NEW MEXICO HISTORICAL REVIEW

Editors

FRANK D. REEVE

PAUL A. F. WALTER

Associates

PERCY M. BALDWIN

GEORGE P. HAMMOND

FRANCE V. SCHOLES

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ARTHUR J. O. ANDERSON

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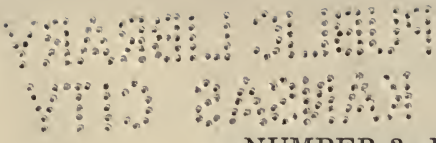
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The Historical Society of New Mexico
THE ARCHAEOLOGICAL SOCIETY OF NEW MEXICO

Stephen Watts Kearny
Centenary Program



The Hon. Pearce Rodey, Chairman
Vice-President of the New Mexico Historical Society



Presentation of the Battle Flag of the U.S.S. New Mexico
Rear Admiral George Lester Weyler

Acceptance of the Battle Flag on Behalf of the State
of New Mexico.....Brigadier General Charles G. Sage

Acceptance of the Battle Flag on Behalf of the Historical
Society of New Mexico.....Mr. Paul A. F. Walter
President of N. M. Historical Society

"The Star Spangled Banner"

"The Year of Decision".....The Hon. William A. Keleher



St. Francis Auditorium 8:00 p. m. October 16, 1946

NEW MEXICO HISTORICAL REVIEW

VOL. XXII

JANUARY, 1947

No. 1

THE BATTLE FLAG OF THE U.S.S. NEW MEXICO

By REAR ADMIRAL GEORGE LESTER WEYLER

Mr. Chairman, The Honorable Governor of New Mexico, Honorable Postmaster General of the United States, distinguished guests, Ladies and Gentlemen:

I find it a great honor and a pleasure to represent the Navy at this celebration of the 100th anniversary of the establishment of a new province, by that great pioneer and soldier, General Stephen Watts Kearny. With their unyielding spirit, and unmatched courage, this man and his followers conquered the wilds of our western territory. On half rations, insufficient shelter, inferior equipment and poor horses, many of which were abandoned and others used for food, these men inched along, establishing bases, taming the inhabitants, and fighting the elements until their goal was reached.

Comment on these exploits will be left to others—as my mission is one relating to recent achievements in which the very flag that Kearny carried across this continent in the name of freedom was, a century later, carried on across the vast reaches of the great Pacific, to crush an enemy seeking to destroy the peace of the world.

There is, however, great similarity in General Kearny's accomplishments and those who fought our ships in the recent war, capturing from a determined and strongly entrenched enemy every island essential to further operations, and planting thereon this symbol of freedom. As with Kearny, our movement was slow at the beginning as

little was known of practical amphibious warfare. However, lessons were learned *well*, and no obstruction of nature, or counteraction of man, could deter either from their missions.

It is deemed appropriate to relate in some detail the war service of the United States Battleship New Mexico, named after your great state, whose *battle* flag is to be presented here tonight. May I also say that Vice Admiral J. B. Oldendorf, Commandant of the Eleventh Naval District, of which New Mexico is a part, regrets that he was unable to make this presentation personally, and that it is his wish to visit your city in the near future.

The battleship New Mexico well earned her part in the triumphant final operation of World War II, when, with other powerful units of the Third Fleet, she steamed past Fujiyama, to drop anchor in Tokyo's outer harbor at 3 p. m. on August 27, 1945.

Active in the Pacific since January, 1942, she steamed 183,000 nautical miles in war operations, in the course of which she participated in nearly every *major* campaign from Guadalcanal to Okinawa. Of the 1,365 days between the Japanese attack on Pearl Harbor and the enemy's surrender, the New Mexico spent 544 in combat areas. She was three times damaged in battle, suffering a total of 307 casualties including 86 dead and five missing. Her batteries fired more than 69,000 rounds of ammunition on enemy held bases and in enemy actions. The weight of the ammunition expended was approximately 13 million pounds—a weight greater than was fired by any ship in any previous war in history.

Though the New Mexico is no youngster, with her 27 years of service, she packs a punch that belies her age. These old battleships, some of which saw action in two world wars, were rarely in the headlines. Many times they moved in ahead of invasion armadas to soften enemy strongholds for landings. They stayed on to cover the assault forces until beachheads were secure, sticking by the troops ashore despite bombs, torpedoes, short battery fire, suicide planes and suicide boat attacks.

Twice in the closing months of the war the New Mexico suffered serious battle damage. First, during pre-invasion bombardment off Luzon. On January 6, 1945, she was fiercely attacked by Japanese suicide planes. One of the planes carrying a 500 pound bomb crashed on her navigation bridge, killing her commanding officer, 29 others, and wounding 87. At the time, the New Mexico served as my flagship, and we were honored with the presence of Admiral Sir Bruce Fraser, Royal Navy, Commander British Eastern Fleet, and Lieut. General Herbert Lumsden, Royal Marines. The latter lost his life in the attack. Numerous Army officers and observers were also aboard, including William Chickering of *Time Magazine*, who gave his life in the performance of his duties.

Again on 12 May while supporting landings on Okinawa, a bomb laden plane crashed on the gundeck. Fifty-eight men lost their lives and 121 others were wounded.

The New Mexico, attached to Battleship Squadron One, under the command of Vice Admiral J. B. Oldendorf, also operated with the First, Third, Fifth, Seventh and Ninth Fleets, serving under Fleet Admiral Chester W. Nimitz, Admiral William F. Halsey, Admiral Raymond A. Spruance and Admiral Thomas C. Kinkaid.

The New Mexico was operating with the North Atlantic neutrality Patrol when the enemy struck at Pearl Harbor, and was immediately transferred to the Pacific Fleet transiting the Panama Canal on January 11, 1942.

Her early war service in the Pacific found her operating from bases in the Fiji and New Hebrides Islands, harassing the Japanese withdrawal from the Solomons, and covering the final consolidation of Guadalcanal. She then aided in the reconquest of Attu in the Aleutians, and covered the landing of assault forces on the island of Kiska. Next she appeared astride the equator, pounding the shores of Butaritari Island and supporting the landings on Makin Island. Then came Kwajalein in the Marshalls where the New Mexico again supported landings, after which she turned her guns on Taroa and Wotje in the same island group. It was in this campaign that she suffered her first personnel

casualty of the war when her target spotting plane was shot down in Kwajalein Lagoon.

After a brief rest for her crew in Sydney and change of commands, the New Mexico was again ready for action and with others steamed toward the Marianas Islands, taking Tinian under fire and covering landings on Saipan. After these islands were secured, she conducted 19 consecutive days of firing against Guam and nearby Rota Island. After the initial landing on Guam, she provided illuminating fire to prevent Japanese surprise counterattacks against our forces under cover of darkness. So efficiently was this service performed that at dawn the Marine Commanding General radioed his personal congratulations to the ship. The Marianas campaign completed a year of heavy bombardment for the New Mexico, and she was returned to Puget Sound Navy Yard for new guns and overhaul.

Her next mission was in the securing of Leyte and Samar, and later covering landings on Mindoro, all in the Philippines. Early in January, 1945, this proud battleship named after your great state was the flagship of the bombardment group in Lingayan Gulf, in strategic Luzon Island, and commenced her systematic bombardment on San Fernando, and the northern landing beaches in that gulf. The Japanese retaliated with fierce and repeated air attacks on the formation, and it was here that the ship received her first serious battle damage. Although badly injured, and her captain, Robert W. Fleming lost, the good ship stayed in action and continued her bombardment schedule. During this operation, strategically located enemy shore batteries were destroyed, and two railway bridges were rendered useless, thus preventing reinforcements of enemy troops from the North.

After battle repairs were completed, the New Mexico was again at sea, this time to play a major role in the greatest amphibious operations yet undertaken in the Pacific, the assault on the Japanese Island of Okinawa.

For six days the New Mexico supported underwater demolition teams and mine sweeping operations, blasted away at pill boxes, airplane revetments. She cleared her

assigned sector of coastal guns and camouflaged positions. After the assault waves landed on the beaches, the New Mexico with other units gave gunfire support to our troops ashore. Narrowly did she escape being struck by torpedoes fired from an enemy submarine, but prompt maneuvering avoided them.

For 64 days the New Mexico remained at Okinawa and was subjected to repeated suicide air attacks. The ship was credited with 21 enemy planes shot down. At Okinawa 8 planes were accounted for, and four within 16 minutes during a heavy air attack on April 12. She also *assisted* in the destruction of seven planes during this operation.

Etched deep in the memory of the crew is an air attack which occurred at dusk on May 12. A group of enemy planes approached from astern and closed to dive. The first kamikaze was destroyed by a 5" shell passing under it, flaming it, and lifting it clear of the mastheads. Meanwhile, another plane had begun its final dive, and though hit several times, could not be stopped. It crashed on the gun deck and tore into the stack leaving a jagged 30 foot hole. Flames from the exploding bomb and the plane's ruptured gasoline tanks shot 200 feet skyward, like a gigantic blow torch.

While doctors, hospital corpsmen, and stretcher bearers went to the aid of the wounded, damage control parties fought the fires, and in the amazingly brief period of 15 minutes reported all fires under control, and in 21 minutes all were extinguished. The ship had taken a *hard* blow. Casualties totalled 177 men, 55 dead and 3 missing. Weary, grimy men worked throughout the night appraising damage, clearing debris and readying the ship's guns for new attacks. During the next few days miracles of gunnery and hull repairs were accomplished, permitting her to remain on station. Later after permanent repairs were affected, she accompanied the Third Fleet to Tokyo, and took part in the initial occupation of the enemy's home island.

The New Mexico has one of the longest histories of any ship in our Navy. Authorized by Congress in 1914 and commissioned in 1918, her history bridges two world wars. Like most things war built she incorporated many advances

in naval construction, being 16 feet longer than previous ships of her class with a main battery larger than any ship before her. After World War I she became the flag ship of the newly created Pacific Fleet.

Long before World War II men of the fleet nicknamed the New Mexico "The Queen of the Fleet" in tribute to honors she won in Fleet competitions, in gunnery, engineering, and battle efficiency.

You can well be proud of this gallant ship which, with other old battleships, helped to deliver the hard punches that knocked out the enemy from island to island. These ships have forged a magnificent fighting record, firing a greater weight of shells effectively against the enemy than any squadron of ships in naval history. Although now "in commission in reserve" the New Mexico is still "The Queen."

During these operations the New Mexico flew this flag which is to repose tranquilly in the museum here in your capital city. Be it known that no other flag ever flies above the Stars and Stripes, except the church pennant when religious services are in progress on our ships and stations. This custom is in accord with our belief that the church is above the state, but both marching forward together seeking world peace.

When thus displayed we see the church flag flying majestically above the Stars and Stripes, yet so close together they seem to merge into one banner dedicated to the brotherhood of man, and freedom for all mankind. That freedom seems obscured today, necessitating full faith in our statesmen to bring about unity among nations, otherwise our civilization cannot survive.

While we call this a battle flag in war, in peace it represents the symbol of individual liberty, under which your state and cities grew and prospered, as did the nation to which it belongs. A young nation founded on principles of equality and freedom was to become the greatest of all lands, towards which the world looks for aid in peace and in war. America has never failed to render such aid, nor has it ever offered or accepted war, except in the defense of the precepts of freedom of democracy.



U. S. S. New Mexico

Governor, in the name of the Navy Department, I present the Battle Flag of the Battleship New Mexico to your state, with the knowledge that we will all *ever stand close* to it, and *defend* it whenever or wherever needed.

THE YEAR OF DECISION

By WILLIAM A. KELEHER

For a full hundred years now New Mexico has been a part of the United States of America, not an important part perhaps, but it can be said with sincerity that New Mexico has contributed in its own small way since 1846 to help build a great and cohesive nation. The New Mexico of a century ago was indeed a part of the genuine western frontier. Under Spanish and Mexican rule, the province of New Mexico was governed by laws that were enacted in Durango, in Mexico City, and in Spain. Geographically New Mexico was isolated, hemmed in by towering mountains. Transportation was extremely difficult. There was only occasional communication with either Mexico or the American States. Tribes of wild Indians, notably the Navahos, Apaches, Comanches, Kiowas and Utes, roamed over New Mexico pretty much at will. The inhabitants suffered greatly in loss of life and property from depredations by Indian tribes. New Mexico was and is a long distance from navigable streams and salt water.

Even today New Mexico has many things in common with the Mother Country of Mexico, not shared by any other state of the Union. Geographically we are Mexico's next-door neighbor. Our soil was once Mexican soil. Our cultural background is fundamentally based on Spanish and Mexican life developed over hundreds of years. The language spoken by many of our people is the national language of Mexico.

This occasion is a memorable one in the history of the State of New Mexico, and of the American nation. The people of our country are thinking today as never before in terms of internationalism, as opposed to nationalism. They have an interest and a sense of personal concern never before manifested. Because the people of America are now directing their thoughts toward international horizons, this

occasion and the program prepared for its celebration are timely and justified. We would, however, be doing a disservice to the nation and to ourselves if we seized upon this occasion as one for a review of the glories of American achievement of a century ago. We would exhibit bad taste and poor manners if we attempted today to praise unduly the military successes of a hundred years ago. Certainly it would not be appropriate to say a single disparaging word about the efforts of the Mexican Republic to prevent seizure of its territory, nor to criticize the attempts of its leadership of that day to maintain the honor and dignity of their nation.

Fortunately an excellent relationship exists today between the government of the United States of America and the Republic of Mexico, a relationship perhaps never before in the history of the two nations so cordial and sincere. Our good neighbor policy, so long planned and nurtured by men of good will of both nations, has accomplished much in the field of foreign affairs in Mexico and the United States. That policy holds great promise for present and future harmony and understanding. We hear frequent mention of a subject called intellectual coöperation between our country and Mexico. The words, "intellectual coöperation," introduced of recent years into the vocabulary and terminology of both the English and Spanish languages, are today used to describe and define the honest and able efforts made by and between the diplomatic representatives of the two countries to achieve mutual trust and helpful understanding, certainly worthy and desirable objectives. A most recent practical demonstration of this spirit of intellectual coöperation has been exhibited in the harmony and mutual help apparent in the two countries during World War II.

Viewing the relationship between the two countries in retrospect, it may be said that no fair-minded student of history can sincerely argue that we of the United States of America have been free from blame in times past in attempting, because of superior strength, to impose our will on that of our neighbor to the south. We must plead guilty

of having meddled in her affairs, when it seemed to serve our purpose, from either a political or a diplomatic standpoint, and in attempting, perhaps in entire good faith, to interfere with her way of life in the conduct of administrative affairs, on the theory that we knew better than Mexico the things that were for her own best interest. As early as 1825, Joel R. Poinsett, acting under instructions from Henry Clay, went to Mexico as the representative of the United States, and began negotiations looking toward the purchase of a great slice of northern Mexico, certainly conduct which was an affront to that nation. Poinsett's name is kept alive and remembered today by the red flower that appears each year about Christmas time, while his work as a diplomat is recalled only by those interested in history.

During the presidency of Benito Juarez, that great Mexican leader, our government, on March 6, 1860, authorized the appearance off Vera Cruz of the battleship *Saratoga*. Our naval forces there participated in Mexican affairs to an extent which certainly would not be tolerated under the good neighbor policy of our day. American Marines were landed in Vera Cruz in 1914 by order of President Woodrow Wilson, and permitted to intervene in an incident which grew out of the ousting of General Victoriano Huerta, believed to have been responsible for the assassination of President Madero. As a result of that intervention a number of Americans and Mexicans lost their lives. All of these incidents, and others which might be mentioned, are now fortunately a thing of the past, forgotten and forgiven. Because of the eventual satisfactory solution of difficulties which in former times produced strained relations, and because of present cordial relations, it is believed that even the most zealous Mexican citizen would not object to the celebration in Santa Fe today of the centennial of the American Occupation, even if that celebration may perhaps recall for Mexico unpleasant and unhappy memories.

Thinking in terms of the building of a great free country, with no potential foe on land that spanned the continent from ocean to ocean, the leaders of our nation of a century and more ago, projected their thoughts many years into the

future. With their eyes focused on the international stage, they interpreted the things of their day in the light of things to come. They considered how the happenings of their times would affect future generations in their relationship to national solidarity.

Forty-five years after the American colonies had declared their independence of England, the people of Mexico, in 1821, declared their independence of Spain. In that year of 1821, the war of 1812, between England and the United States, had been over a scant six years. There was every indication in 1821 that England might and perhaps would attempt to acquire from Mexico, by purchase or conquest, the important California ports of San Francisco, Monterey and San Diego. We can adequately realize today the value of the decisions made by American leadership a hundred years and more ago to checkmate the designs of England. We can appreciate the value of their determination upon a policy which provided that no foreign power should be permitted to gain a foothold on this continent.

It would be interesting to explore the incidents which foreshadowed war with Mexico in 1846, to perhaps attempt to justify that war in the light of history. However, this is neither the time nor the occasion for such a discussion. We might say in passing, as a matter of interest because Texas is our neighbor to the south and to the east, that the course of events in Texas in 1835, and annexation of the Texas Republic by the United States ten years later, had a great deal to do with the actual beginning of the war of 1846, which ultimately meant invasion and conquest of New Mexico and California. During that critical period in our history the destiny of this nation was in the hands of men like Daniel Webster, Henry Clay, Andrew Jackson, Martin Van Buren, and other great statesmen and military leaders. It will help to orient ourselves historically if we recall that Abraham Lincoln was only thirty-seven years old in 1846, and that the Civil War of 1861 to 1865 was a decade and a half in the future.

As interesting as these sidelights of history might be, we have no time to pursue them. Our purpose on this

occasion is to recall some of the stirring events of the time when New Mexico became a part of the United States of America. We recall tonight that the American flag was first raised in this City of Santa Fe on August 18, 1846. We would like to recapture if possible some of the atmosphere of a romantic and most exciting period of the history of New Mexico.

We are happy to salute and to pay tribute today to the name and memory of Stephen Watts Kearny. He was the man who led the Army of Occupation into New Mexico. Fate and his superior officers assigned to him the part of playing the lead in the great, adventuresome drama of conquest of our own New Mexico. This distinguished leader of men was born in Newark, New Jersey, in 1794, and died—perhaps an unhappy death—as the result of his clash with Fremont in California over rank and authority—in St. Louis, Missouri, on October 31, 1848. Kearny abandoned his studies at Columbia College in New York when eighteen years of age, to enlist in the American Army. He fought bravely against the British in the War of 1812. He soon demonstrated a great talent for leadership and outstanding ability in military affairs. Throughout his adult life, he manifested the greatest patriotism and love for his country. Chosen to lead the expedition to conquer New Mexico and California, he demonstrated ability in that perilous undertaking that won him acclaim that has not been dimmed in a full century of time.

Kentucky born Alexander W. Doniphan, a Missourian by adoption, enlisted hundreds of men in Missouri for service in Kearny's army. The advance outfit under the command of Colonel Kearny consisted of 1,658 men, sixteen pieces of ordnance, 12 six pounders, and 4 twelve-pound howitzers. Kearny and his soldiers left Fort Leavenworth on June 29, 1846. By July 2 his army of the west was on the trail headed for Santa Fe. Traveling through Council Grove, Bent's Fort, Cimarron Peak, down Raton Pass into New Mexico, the army, enduring much in a strange, uninhabited country infested with Indians, reached the Mora River on August 14, and Las Vegas on August 15.

Carrying out instructions given to him by the War Department, General Kearny mounted the roof top of an adobe house in Las Vegas to proclaim that he had taken the country on behalf of the United States of America. He gave assurance of protection of life and property, and promised religious freedom. By August 16 the American troops were at San Miguel, on the Pecos River. On the 17th they had reached the ruins of the Pecos Indian village.

On August 18, 1846, after a spectacular march of almost nine hundred miles in less than fifty days, General Stephen Watts Kearny, who had been promoted from Colonel to General in the field, with his entire command, entered Santa Fe, the capital of the province of New Mexico. On that day, August 18, 1846, General Kearny took peaceable and undisputed possession of New Mexico in the name of the government of the United States. The conquest was accomplished without the loss of a single man, or the shedding of one drop of blood. John Taylor Hughes, a young school-teacher-soldier with Doniphan, told the story of the conquest and his version of events has been accepted as historically accurate. Those of us who have been privileged to live in Santa Fe, or to visit this most gracious city on occasion, can close our eyes and almost visualize the happenings of a most exciting time in the history of this ancient capital one hundred years ago. The geography of the country today is identical with that of the days of the conquest. The place names of long ago, Mora, Las Vegas, San Miguel, San Jose, are familiar to all of us. The waters of the Pecos ran then pretty much in the banks they now occupy. We may even speculate that August 18, 1846, was a delightful August day, one of those long summer days for which Santa Fe is noted the world over. Thanks to the foresight of historic minded citizens, the Palace of the Governors has not been materially changed in the hundred years that have come and gone since General Kearny came on a very serious mission. The historic plaza has been preserved for posterity in its original place and setting. With Kearny's mounted soldiers advancing hourly closer and closer to Santa Fe on that historic day, things must have been tense indeed as the drama of invasion

unfolded. The Mexican troops had prepared for days to resist the invaders. Santa Fe was filled with rumors of impending events. The women and children had fled to places of safety in the mountains. For reasons much too involved to recall here, General Manuel Armijo, the Governor of New Mexico, failed to engage in the battle that was expected to be the high point of the resistance movement. In his diary of Tuesday, August 18, 1846, John Taylor Hughes jotted down many things of present historic interest:

General Armijo fled for fear of assassination by his own people. Country remarkably dry & sterile 5 or 6 miles before you get into the town, & covered by dwarf cedar—The day was cloudy until evening, when the sun broke out just as we entered Santa Fé. Gen. K. came in advance & entered the town with ten companies, in fine array & banners streaming in the breeze, behind them the Artillery, which halted on the hill, and the Volunteers under Col. Doniphan marched next in order through the various crooked streets of the town; their banners gaily flown to the breeze, while the batteries fired a salute of near 20 guns. The American flag was erected in the public square so as to wave over the Palace Royal or Gov. Armijo's Residence. We encamped on a perfectly bare spot of sand, after a travel of 29 miles, not having halted to eat a bite—the men were very hungry and much fatigued—the horses are almost perished to death—neither man nor horse had anything to eat; nor did they get anything until the next morning—some few got a piece of bread or cheese from the Spaniards.

In his diary for Wednesday, August 19, 1846, John Taylor Hughes reported:

Gen. K. took up his headquarters in the Palace . . . on the night of the 18th—the flag waved about the public square—at 9 a. m. I was invited to go down in town to hear Gen. K.'s speech to the Spaniards & to see them take the oath of allegiance to the Gov. of the U. S.

We all recall General Kearny's speech in Santa Fe, addressed to the people of New Mexico by authority of the government of the United States, of his declaration that he and his soldiers had come as friends to make New Mexico a part of the Republic of the United States; of his assurance of freedom of religion, of respect for property rights, of protection against the Indians. With pardonable pride, we may say here today that the promises General Kearny made a hundred years ago have been faithfully performed

by the government he represented. There were times in the Territory of New Mexico after 1846 when it seemed as if the United States considered New Mexico as a national step-child, but subsequent to statehood we may speak of those times in the past tense.

The people of Santa Fe have always been an accomplished and resourceful people, noted for their hospitality. They were as accomplished and resourceful a century ago as they are today. Their ability to handle a most difficult situation was never better demonstrated than by the diplomatic manner in which the leaders in the political world at Santa Fe bowed to the inevitable on August 18, 1846. They graciously accepted and made the best of a serious military and political crisis. Ralph Emerson Twitchell and L. Bradford Prince, eminent New Mexico historians, joined their knowledge of events to tell many years ago that story in the following words:

The advance of the American column arrived in sight of the city of Santa Fé at three o'clock in the afternoon of the 18th of August, 1846; by six o'clock the entire army was in the capital. The general and his staff, and other officers of the army, were received at the old Palace by Lieutenant Governor Vigil, assisted by about thirty representative citizens of the city. Refreshments were ordered served by Governor Vigil. . . .

There, in the Old Palace, sat the American general and his principal officers, the guests, enforced it is true, but still welcome, of all that was left of the men who had derived authority from the Mexican Republic; seated in a building, which, in historic interest, surpasses any other within the confines of the United States; built in the first years of the 17th century, and, down through all the succeeding years, until 1886, whether the country was under Spanish, Pueblo, Mexican or American control, it remained the seat of authority; whether the ruler was called viceroy, captain-general, political chief, department commander or governor and whether he presided over a kingdom, a province or a territory, the Old Palace has been his official residence.

Acting Governor Juan Bautista Vigil y Alarid, who had been left in charge of the provincial government by Governor Manuel Armijo, in responding to the speech of General Kearny, reflected the true sentiments of the people of Santa Fe at the time of the conquest:

Do not find it strange if there has been no manifestation of joy and enthusiasm in seeing this city occupied by your military forces.

To us the power of the Mexican Republic is dead. No matter what her condition, she was our mother. What child will not shed abundant tears at the tomb of his parents? I might indicate some of the causes for her misfortunes, but domestic troubles should not be made public. It is sufficient to say that civil war is the cursed source of that deadly poison which has spread over one of the greatest and grandest countries that has ever been created.

General Stephen Watts Kearny, in command of affairs in Santa Fe, acted with military speed and precision. He undertook the organization of a government for New Mexico, and had it completed by September 22, 1846. The Kearny code, written by Willard P. Hall, of Doniphan's troops, was adopted as the basic law of the new territory of New Mexico and remains so to this day. Within four months after Kearny had arrived in Santa Fe, New Mexico had become an important point of departure for new and far more extended expeditions, to the interior of Mexico, to the great ports of the Pacific Ocean in California.

Viewed in the light of the last hundred years, the conquest of New Mexico by the United States was an inevitable part of a policy known as "manifest destiny." The year of 1846 was indeed a year of decision for the United States of America. Our government was involved in difficulties with England over the Oregon question. Speed was of the utmost necessity if France and England were to be outwitted. Fortunately for the America of today, we had statesmen of vision and military men of courage and foresight in the America of one hundred and more years ago. Prompted by patriotic motives, they did not hesitate to act at a time when action meant the fulfillment of their dreams of empire. These men left a glorious inheritance for posterity, because of the skill with which they handled the conquest of New Mexico. It is only necessary to contrast the conquest of New Mexico in 1846 and the conquests by European powers of small nations in World War II, to demonstrate the greatness with which America handled a most difficult problem.

New Mexico is proud today of the magnificent progress that has been made by the descendants of those residents who were citizens of Mexico at the time of the conquest.

In dealing with its new citizens, the government of the United States undoubtedly adopted a short sighted policy. The newly created American citizens were permitted to shift for themselves, to learn the language, customs, laws, and habits of the American people without any assistance whatever from the conquering nation, a policy that was ruinous to many individuals, and to the inhabitants as a whole. Today's citizens of New Mexico, of Spanish and Mexican ancestry, having survived the ordeal thrust upon them, are thoroughly amalgamated as Americans, with no regrets because their ancestors a century ago accepted citizenship in a country offering great hope and promise for the future.

The name of Stephen Watts Kearny is recalled with sentiment and gratitude by the people of New Mexico today. General Kearny was a brave and honorable leader in New Mexico's first test under the Stars and Stripes. We can say today, as one of his close friends said when he died in St. Louis ninety-eight years ago, at the age of fifty-four years: "If ever there was a man whom I considered really chivalrous, in fact a *man* in all that noble term conveys, that national soldier and gentleman was Stephen Watts Kearny."

BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER I

INTRODUCTION

From 1846 until 1887 New Mexico was divided into three judicial districts. The chief justice during this period maintained his headquarters and residence in Santa Fe. That the presiding judge should be located at the seat of government for the Territory of New Mexico was basically sound. It was accompanied, however, by one distinct disadvantage in that the first judicial district over which he presided was also by far the busiest district in the Territory. It comprised the counties of Santa Fe, San Miguel and Santa Ana from 1846 to 1860. In the latter year the counties of Mora, Colfax, Taos and Rio Arriba were added.

The second judicial district during this early period included the counties of Bernalillo and Valencia, and also, after their organization, the counties of Socorro, Doña Ana and Arizona. Terms were regularly held at Albuquerque and sometimes, by special order of the court, at Socorro. The third district, until 1860, consisted of the counties of Taos and Rio Arriba, with headquarters at Fernandez de Taos.

Under the sixteenth section of the organic act, actual designation of the judges to districts was left to the discretion of the territorial officials through a provision that,

Temporarily and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding court in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign judges, and alter the times and places of holding the courts as to them shall seem proper and convenient.¹

1. 9 U. S. Stats. at Large 446, Ch. 49, Sec. 16 (Sept. 9, 1850)

In accordance with a law passed July 10, 1851, the chief justice of the Territory was to reside in the district in which the seat of government for the Territory was located. An elaborate schedule for conducting terms of the various district courts was prescribed by the act. However, for various reasons a number of the court sessions were not held by the judges during the late summer, fall and winter of 1851-52 as required by law. In an effort to correct this situation, the first legislative assembly at its second session on January 3, 1852, passed a supplementary measure which contained the following express directive:

The judges of the supreme court of the Territory of N. Mexico are hereby required to hold the district courts in the respective districts to which they have been assigned, and in each county of said district for the disposal of all civil and criminal business within said counties, in exact conformity with the act passed at the last session of the legislative assembly, approved July 10, 1851. . . .²

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To help prevent passing of court terms in case of unavoidable absence and illness, the act further provided in its second section "that the judges of the Supreme Court holding district courts may alter and change their districts temporarily, and if any judge should be absent or sick, either one of the other judges may hold the courts in the districts of those who are thus prevented from holding their courts."

Provision for a term of the Supreme Court was made by an act of the legislative assembly on December 18, 1851, which provided that the court should meet at Santa Fe, the seat of government of the Territory, annually, commencing on the first Monday in January, 1852, and each year thereafter until changed by law.³

By re-arrangement of districts in 1860, the third judicial district was shifted to the southern part of the Territory where it remains to this day. Included in the new third district were the counties of Doña Ana, Grant and Lincoln.

Dissension flared up from time to time concerning the

2. Laws of New Mexico, 1851-52 (Santa Fe, 1852), p. 259.

3. Laws of the Second Session, 1851-52, page 227.

apportionment of the justices, and efforts were made on several occasions to have them shifted from one district to another because of local prejudices.

In the latter part of 1847 it became apparent to influential people of the Territory that jurisdiction of the courts established by General Kearny, and reorganized by General A. W. Doniphan, was very limited, especially when there was any conflict between the civil and the military authorities. The *Santa Fe Republican*, in an editorial upon the existing state of affairs, said:

Recently the American citizens here have seen the powers properly falling under the jurisdiction of the civil tribunals arrogated by the military, bringing the former into contempt and disrepute, and that there is in effect only the form of a civil government in the Territory, and that for all practical purposes it is paralyzed and ineffectual. This being the state of things, the will of the commanding officer is the law. The citizens here are not aware that the laws framed and established by General Kearny and confirmed by the President have been revoked. They wish to know whether the organic laws of General Kearny are still in full force, or whether they have been revoked by order of the President in whole or in part. Why call together a legislative body if its acts may be annulled and made void if the will of a commanding officer is paramount. Why have judges and courts if they can only act at the pleasure of the military authorities.⁴

The historian Ralph Emerson Twitchell observes that though Judge Joab Houghton, presiding officer of General Kearny's court, was not a lawyer, "it does not require a lawyer to ascertain that Judge Houghton's stock of good common sense was great enough to cause a denial of a writ of habeas corpus rather than have a clash with the commanding officer, who, at that time, happened to be General Sterling Price." The Judge, said Twitchell, "evidently desired to continue dealing out justice, even though his jurisdiction was somewhat warped and hazy."⁵

Soon after the regular Territorial government in New Mexico was organized in 1851, Chief Justice Grafton Baker's court was purged from the military chapel by the ecclesiastics, and the Supreme Court held annual sessions in a building situated on the corner directly east of the

4. *Santa Fe Republican*, Oct. 20, 1847.

5. R. E. Twitchell, *Old Santa Fe* (Santa Fe, c1925), p. 311.

Palace of the Governors. This structure was nearly a hundred feet in length, about twenty-five feet wide, and one story high. During the military occupation it had been used as a quartermaster's storehouse. It was refitted as a courthouse soon after establishment of the Territorial government. Large double doors opened into the street from the courtroom, which was about sixty feet long, easily the most commodious and best courtroom in the Territory. The Supreme Court began its session in this courtroom at Santa Fe on the first Monday in January and continued to sit for the argument of causes for about three weeks. Except for a short period when Territorial legislation provided for a mid-year term of the Supreme Court in July, this was the only session of the Supreme Court held each year.

After the Supreme Court session each justice would return to his own district where he was by law required to reside. Two terms were held in each district annually, one in the spring and the other in the autumn. The time for holding these terms of court was staggered, so as not to interfere with one another, beginning in the north and running through the different counties to the south in rotation. This was done to enable the attorneys to argue cases in the courts of the different districts and, when necessary, for the judge of one district to sit for a judge of another district. The early lawyers and judges were indeed adept at riding the circuit.

From a practical standpoint the Territorial arrangement whereby the Supreme Court members exercised original jurisdiction in the district courts, as well as being members of the appellate tribunal, was wrought with serious difficulties. The review in the Supreme Court of cases appealed, in a certain sense was scarcely a review at all, as the trial judge, particularly in the earlier days, was personally present to convince his colleagues of the correctness of his holdings—it was not an independent review, regarded as a primary prerequisite in the impartial administration of justice. The district judges in many cases wrote opinions contrasting in this respect with the present policy of stating merely their findings of fact and conclusions of law. Some-

times the Supreme Court would be so impressed with the legal reasoning of the member who wrote the trial court opinion that it would adopt his opinion as its own. For example, in the case of *Armijo v. County Commissioners*.⁶ the Supreme Court merely said that, "This case is affirmed for the reasons given in the opinion of the learned judge before whom the case was tried in the court below." This statement was followed by the opinion of the trial judge.

Chief Justice James Davenport almost at the very beginning of Territorial days called attention to this unsatisfactory arrangement when he observed in the case of *Bustamento v. Analla*:

As this case was tried by me in the court below, I have felt a deep anxiety and much interest in arriving at just legal conclusions in the investigation of the principles which should conduct the mind to a correct opinion.⁷

Today a Supreme Court justice who has tried a case in the district court promptly disqualifies himself from sitting in the case on appeal. In Territorial times, at least during the earlier years, the trial judge might not only find himself called upon to sit in the case because the two remaining judges might be deadlocked one to one on the merits of the appeal, but he might be called upon, as in the above instance, to write the decision!

Keenly aware of the undesirability of the three-judge Supreme Court sitting in review of the decisions of its own membership who preside individually upon the district bench, the Constitutional Convention of 1849, chiefly through the influence of Judge Houghton, sought to overcome this unsatisfactory feature and yet retain an economical organization for the proper administration of justice. The results of its labors are reflected by the following provision in its proposed state constitution:

Art. III, Sec. 2. The supreme court shall consist of four judges, one to be supreme or appellate judge, and the other three to be district judges, for the hearing and adjudication of law cases, and associates of the supreme judge in all cases of appeal; and the judge who tried the case shall not be allowed to sit in this appellate court.⁸

6. 3 N. M. (EWS., Gild.) 477, 7 Pac. 19.

7. 1 N. M. 255, p. 256.

8. 31st Cong. 1st Sess., Hse. Ex. Doc. 17, pp. 99-100.

The unsatisfactory condition was called to the attention of Washington authorities from time to time, but the problem was never completely solved until statehood, although with the increase in the number of justices during later Territorial days, the judge who tried the case below withdrew from participation on appeal. In 1895, Governor W. T. Thornton called attention to the unhappy arrangement when he wrote :

I desire to call your attention to the formation of our present Supreme Court, which is composed entirely of district judges. In my opinion it is bad policy for the court of last resort to be composed of trial judges, for while it is true no judge sits in the Supreme Court upon a case which he has tried below, it is certainly a fact, well established from experience in the past, that they too often exert an influence upon their associates on questions arising before them, and upon cases appealed from the various districts, each judge feels an interest in having his own decision affirmed, which is an inducement for each to sustain the other. This system has been in existence for many years in the different Territories and has in the past proven, in many cases, very vicious; and in view of the further fact that the trial judges of the Territory have more work than it is possible for them to perform, and are now in some districts several years behind with their trial docket, I would respectfully recommend the creation of a court of last resort, to be composed of three or five judges, to act for the three remaining Territories of Oklahoma, New Mexico and Arizona, with the right of appeal thereto from the district courts of the several Territories.⁹

An embarrassing situation arising from the dual responsibility of the Supreme Court judges was illustrated by *Lincoln-Lucky and Lee Mining Co. v. District Court*,^{9a} a case wherein it was decided that an associate justice of the Supreme Court could issue a writ of prohibition against another member of the court in a case which might be at issue before him on the district bench. This action by one member of the Supreme Court against one of his colleagues was resisted in the Supreme Court on the ground that it would result in an unwarranted interference, would be subject to abuse, and might readily be carried to the extent, if two or more members of the court were hostile to one

9. Report of the Governor of New Mexico, 1895 (Washington, Gov't Printing Office, 1895), p. 75.

9a. 7 N. M. 486, 88 Pac. 580.

another, of paralyzing the business of the courts. The majority, however, sustained the power of one judge to prohibit another on the ground that, whatever the relationship of the justices might be, the writ issued out of the Supreme Court to a statutory inferior court, and that the effect of the writ was merely to preserve the *status quo* until the question was finally disposed of on appeal. Judge A. A. Freeman dissented, revolting at the thought that failure of the trial judge to follow the mandate of his brother judge would subject him to the pains and penalties of fine and imprisonment for contempt.

Another difficulty with the Supreme Court membership was that the judges were political appointees. This tended to militate against an impartial judiciary. Some judges were accused of being too easy upon lawless characters, others were said to favor members of the political party which had brought about their appointment. Nevertheless, there were many whose devotion to duty and justice was unquestioned, though in some instances their personal conduct was the subject of attack both in the press and through iniquitous whispering campaigns.

Still another political difficulty was the fact that the membership was dependent upon the party in control of the administration in Washington. A change there meant that a new personnel of the Court could ordinarily be expected. Thus, in 1885 there was a complete turnover and cases which were pending had to be reargued and started anew because none of the old judges remained to carry on. The result was a serious and unfortunate delay for the litigants in the settlement of the disputes.

The number of cases determined by the Supreme Court in the earlier days of the Territory were few. Distances to the capital were so great and the attendant cost of appeal was so excessive that each district was very much the law unto itself. Furthermore, the thought that the trial judge needed to win but one of the other judges over to his view to affirm, furnished little incentive for an appeal. From the date of organization of the Kearny court down to the advent of the railroads in 1879, a period of about thirty-three years,

only eighty-two opinions were reported.¹⁰ A few cases appear not to have been printed, and a number of the early appeals were dismissed without benefit of written opinions.

An interesting but unfortunate policy pursued by the Territorial Court (still practiced by the Federal courts to some extent) was to announce orally the decision or holding of the Court immediately following the oral arguments. The written opinion would then be prepared and handed down at a later date. Though this had the advantage of promptly advising litigants of their fate, it had the restrictive effect of binding the court to an orally announced conclusion, which might later upon more careful study of the case prove to be unwarranted or untenable.

Attorneys in the early days were not only handicapped by a scarcity of decisions by the New Mexico Supreme Court, but they were further hindered by the fact that printed copies of the opinions of the Court did not become available to the bar, except for a few important cases which were reported verbatim in the newspapers, until they were compiled by Charles H. Gildersleeve during the incumbency of Chief Justice L. Bradford Prince. Then the first bound volume of the New Mexico Supreme Court reports appeared, covering the decisions of the court from its first session in January, 1852, to the January term, 1879, inclusive.

Collection of the early opinions proved to be an arduous task, according to Mr. Gildersleeve, because some of the clerks had neglected to record the opinions deposited with them. Although the practice has long since been abandoned, Mr. Gildersleeve sought wherever possible to include with the opinions of the court the briefs and arguments of counsel. He was considerably disconcerted, however, because "the clerks have taken no pains to preserve the briefs of counsel."¹¹

The files in the office of the clerk of the Supreme Court, furthermore, were not always in the best of order. This was largely due, no doubt, to inadequate filing facilities and

10. Of this total 81 cases appear in Volume 1, New Mexico Reports, and one case was belatedly printed in Volume 9.

11. Charles H. Gildersleeve, "Explanatory Note," N. M. Supreme Court Reports (Chicago, Callaghan, 1897), vol. 1., p. ix.

because of several removals of the court to new locations. Clerk Jose D. Sena, in reporting to the governor on the situation in 1898, stated:

At the time that I took charge of the affairs of this office, nearly one year ago, the files in this office were in a very disorderly and lamentable condition, but after two months and a half of constant and hard work I have succeeded in arranging the files in a proper and accessible manner. . . . In a good many instances, owing to the careless manner in which the files had been kept, papers of great importance are missing, in several cases no papers at all having been found by me.¹²

The Territory had sixty Supreme Court judges from 1846 until statehood sixty-six years later. The largest number of decisions were put in writing by the Hon. John R. McFie who prepared a total of eighty-one majority opinions, concurred specially twice and dissented from the majority once. Judge McFie held the distinction of being the only justice to receive an appointment for a fifth term and of having remained upon the Supreme Court bench longer than any other judge in New Mexico Territorial history.

From 1879 the business of the Supreme Court began to show a great increase, as did the number of cases docketed in the three district courts. This over-burdened the judges, and the district court dockets fell far behind. The difficulties confronting the court became so pressing by 1885 that Governor Edmund G. Ross reported to the secretary of the interior and to Congress in his annual report for that year, as follows:

There are now but three judicial districts in this Territory, and the labor of these courts has become exceedingly onerous. A large part of the year is now occupied by each of the three judges actually in court, leaving them but little time for recuperation or for the preparation of opinions upon the many very important cases that come before them for adjudication. The result is that they are greatly embarrassed in the discharge of their duties, and are often unable to clear the docket in one county before court begins in another; important cases, civil and criminal, are obliged to be held over to a later term, to the great detriment of litigants, and with great wrong and the denial of justice to alleged criminals, who are not infrequently compelled to be in jail for another six months, under accusations of which they claim to be, and sometimes are finally on trial found, to be innocent. Another serious phase of this matter is in the fact that, with but three judges

12. Report of the governor of New Mexico, 1899 (Washington, 1899), p. 248.

to constitute the Supreme Court of the territory, each of the three is required, in order that there may always be a majority for the promulgation of an opinion and the decision of a case, to sit in judgment and reviewal of his own decisions in the court below. This is unfair and embarrassing to the judges themselves, as it is not unnatural that it should in the minds of interested parties create suspicion of collusion, and thus cause scandals in connection with a tribunal that above all others should be the furthest possible removed from all appearance of illegitimate motive as well as action. I therefore recommend the creation of a fourth judicial district for this Territory.¹³

The governor's plea did not go unheeded and pursuant to act of Congress, approved February 28, 1887, a fourth district came into being. The first judicial district was reorganized to include the counties of Santa Fe, San Juan, Rio Arriba and Taos. The second district remained unchanged, comprising the counties of Bernalillo, Valencia and Socorro. The third district was rearranged with headquarters at Las Cruces and comprising the counties of Doña Ana and Grant. The new fourth district headquarters were at Las Vegas and included the counties of San Miguel, Colfax and Lincoln.

The business of the courts, however, now increased so rapidly that less than three years later the situation was almost as serious as before and on January 27, 1890, the New Mexico Bar Association started a move to have the number of districts increased from four to six. Not only was the increase by two districts in line with the needs of the expanded business in the district courts, but it would also prevent reversion to the unsatisfactory situation created by an odd-numbered court when the trial judge might be called upon to break a tie, in event his colleagues were equally divided on his case before them on appeal. In seeking the increase in the number of judges and judicial districts, the Bar Association pointed out that the wealth and population of the Territory had rapidly increased, that five new counties had been created in the last three years, that there was a great accumulation of chancery business, and that mining litigation had jumped upward. "In some of the Districts," concluded the Association's Memorial to the

13. Report of the governor of New Mexico, 1885 (Washington, 1885), p. 7.

Congress, "the Courts are as much as two years behind with the business."¹⁴

Congress lent half an ear to the proposal and a bill was introduced to increase the number of districts to five instead of six. Judge McFie, who during his first term on the bench presided over the third judicial district, was particularly to be benefitted by the increase in the number of districts. He had to travel nearly 300 miles by stage coach twice a year in order to meet his judicial engagements in the district. Appointment of a fifth judge would divide up his immense territory which extended from the east side of the state to the Arizona boundary.

The bill passed Congress¹⁵ and the court met on November 3, 1890, at the Chief Justice's chambers in Las Vegas, to redistrict the Territory. The first district, which had been the primary beneficiary of the re-shuffling three years earlier was left unchanged. Huge Socorro county was transferred from the second to the new fifth district which included also the counties of Lincoln, Chaves and Eddy; the town of Socorro was made the headquarters. Sierra county was made a part of the third district along with Doña Ana and Grant counties. The fourth district was relieved through transfer of Lincoln county to the new district. This district organization became effective on November 10, 1890.

The dockets continued crowded and the increased number of districts only partly compensated for the constantly increasing amount of litigation. New counties, too, were being created, necessitating additional sessions of the district courts at the new county seats.¹⁶

14. N. M. Bar Association, *Minutes*, fifth annual session, 1890 (Santa Fe, 1890), p. 60.

15. 26 U. S. Stats. at Large 226, Ch. 665 (July 10, 1890).

16. In 1891 Guadalupe county was created and added to the fourth judicial district. In 1893 Union county was created and likewise included in the fourth district. In 1899 Otero county was created and included in the third district. McKinley county was established by the Laws of 1899 and joined to the second district. In 1903 Torrance county was created and made a part of the first district. In 1903 also, Roosevelt county was created and added to the fifth district, and Quay county for the fourth district.

As a result a sixth district was authorized and created in 1904 with headquarters at Alamogordo and taking in the counties of Otero, Lincoln, Guadalupe and Quay. Finally, in 1909 the fifth district headquarters was shifted to Roswell with jurisdiction over the counties of Chaves, Curry, Eddy and Roosevelt. A new seventh district, organized the same year, was given headquarters at Socorro and made to include Sierra, Socorro and Valencia counties. Merritt C. Mechem, later governor of the State of New Mexico, was appointed judge of the new district and retained the office until statehood.

The business that accumulated before the Supreme Court during the last few years was still great, but through the efforts of Chief Justice Pope and his able court to clear the docket, a clean slate was left for the State Supreme Court.

Sworn in on January 10, 1912, the new three-judge State Supreme Court started upon its role as the highest tribunal of the nation's forty-seventh state on the morning of January 15, 1912.

CHAPTER II

UNDER THE DREADED STICK

1824-1846

When General Stephen Watts Kearny and his army of occupation set in motion the American wheels of justice throughout New Mexico, their Yankee ways of administering the law were both novel and considerably more efficient than the system to which the native population had been accustomed.

During the Mexican regime the only constitutional tribunal or justice actively functioning in New Mexico was the alcalde's court. The historian Hubert H. Bancroft notes that attempts were apparently made at various times by the Mexican authorities to improve the administration of justice in New Mexico, but with insignificant results. He observes that about 1826 it was practically impossible to obtain justice and that theft and petty offenses were preva-

lent. He quotes one authority in which it is said that there was no *juez de letras* or lawyer in New Mexico and that litigation had to be carried on at enormous cost in Durango, Zacatecas, etc.¹ He adds that two years later there was said to be a *juzgado de distrito* at Santa Fe and that the circuit court of Parral was given jurisdiction in New Mexico. In 1831 the sum of \$3,000 appears to have been assigned for a lawyer to serve as *juez de letras* in New Mexico, but a year later, in 1832, Barreiro, who had served in the area two years as *asesor*, complained that he despaired of being able to introduce order into the administration of justice in the northern possession and that few were able to take their cases to Mexico proper. Bancroft concludes that, "All is very confusing, and it is hard to determine whether the territory ever had any courts except those of the ordinary *alcaldes*."²

Under the Mexican law a provision from the old Spanish constitution had been carried forward which was basically sound. This was what is sometimes referred to as the judgment of conciliation, by which parties litigant were prohibited from originating an action until they had procured from the *alcalde*, who was not a lawyer and not supposed to know anything about law, a statement that a judgment by arbitration or conciliation had been attempted but failed before him on trial.³ In some of the central departments of old Mexico this device worked quite well and resulted in prompt termination of some law suits. In the outlying territories, however, it was seldom followed and in New Mexico, apparently, was quite unheard of.

One writer has reported that the whole province comprising New Mexico was divided into but seven *alcaldeships*, the *alcaldes* serving without salary and subject to the political and military governor. Lansing Bloom mentions eight, including El Paso.⁴ Bancroft indicates that there were

1. *Mex., Mem. Justicia*, 1926, p. 6, cited in H. H. Bancroft, *Arizona and New Mexico*, (1889) note p. 312.

2. Bancroft, *Arizona and New Mexico*, note p. 313.

3. Brantz Mayer, *Mexico: Aztec, Spanish and Republican* (1851), vol. 2, p. 147.

4. Lansing Bloom, "New Mexico under Mexican Administration, 1821-1846," *Old Santa Fe*, vol. 1, p. 45.

from 27 to 42 alcaldes in the region between 1827 and 1832.⁵

Practice before the New Mexico alcaldes was exceedingly primitive. A man with a cause of complaint would go in person to the alcalde and state his grievance in plain and simple form. The alcalde would then direct the complainant to go out and bring the defendant before him. The plaintiff would seek out the defendant and say, "*Le llama el alcalde,*" the alcalde calls you into his presence. This summons was always verbal and spoke for the immediate present, rarely for a future time. Instant attendance was expected.

When both litigants appeared, the alcalde would ask each party to state his own version of the controversy. Occasionally he would call for witnesses and swear them in by having them cross their fingers. Sometimes the matter in dispute was decided by calling in two third parties, one of whom was selected by each of the litigants. Trial by jury was unknown. The decision of the alcalde generally lacked that complete fairness which is normally associated with a decision based upon the merits of the case. As one commentator put it, "There is cause to believe that the path of justice was sometimes impeded by the barrier of a bribe."

Gregg described the situation as follows:

Justice, or rather judgments, are a common article of traffic; and the hapless litigant who has not the means to soften the claws of the alcalde with a 'silver unction,' is almost sure to get severely scratched in the contest, no matter what may be the justice of his cause, or the uprightness of his character. It is easy to perceive, then, that the poor and the humble stand no chance in a judicial contest with the wealthy and consequential, whose influence, even apart from their facilities for corrupting the court and suborning witnesses, is sufficient to neutralize any amount of plebeian testimony that might be brought against them.⁶

When a defendant failed to come along forthwith to appear before the court upon the verbal summons of his adversary, the alcalde dispatched after him the regular process of his court. This was done by sending the alcalde's

5. Bancroft, *Arizona and New Mexico*, p. 311, note 4.

6. Josiah Gregg, *Commerce of the Prairies* (1849), vol. 1, p. 226.

messenger with a large walking cane, known as the *baston de justicia*, or the dreaded stick of justice. This cane, decorated with a peculiar black tassel, was beheld with more apprehension than a modern warrant. If the defendant did not appear in response to summons with the stick, he was considered in contempt of court and was certain to be disciplined accordingly.⁷

Punishment in the *alcalde's* court was by fine and imprisonment, but it was not always meted out in proportion to the offense. Little thought was given to avenging the outraged law or to reforming the wrongdoer. In case of debt, the defendant could be imprisoned, but this was not done if the creditor was willing to accept his services to work out the amount of the judgment. By this scheme the debtor was plunged into a state of servitude. He worked for a fixed sum, the equivalent of perhaps five or six dollars a month, and was furnished the necessary food and clothing. His wages were seldom sufficient to support himself and his family and at the same time discharge the indebtedness. The unfortunate debtor was therefore soon reduced to a state of peonage, and found himself virtually a slave for life.

The *alcalde's* powers extended primarily to the settlement of civil and mercantile transactions, and as representative of the governor to granting possession of lands in his name. In some instances, in absence of a military commander, the *alcaldes* were known to organize their fellow citizens in campaigns against the Indians.⁸ The political chief (*jefe politica*) or governor was the judge of the *alcaldes* and served in a measure as an appellate tribunal for the losing party. Appeals were permissible to the Supreme Court in Chihuahua and further to Mexico City, but this procedure was seldom if ever followed. The distance was prohibitive and the expense was so great as to be beyond the reach of all but a few of the very rich. The cumbrous formalities, too, of Spanish law in the higher courts "formed a prolific hot-bed of special pleading, chicanery and delay." In 1850 there were cases in the Mexican courts, according

7. *Ibid.*, vol. 1, p. 233.

8. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe*, vol. 1, p. 45.

to one authority, in which the papers had been filed a hundred years before and which still remained unsettled.⁹ In proportion as the litigants were wealthy, so were the greedy officials slow in preparing their cases for final hearing and decree.

Reducing the effectiveness of the alcalde's court, also, was the fact that his dreaded *baston* wielded no magic over the military, the clergy, and at one time the mining and certain other special classes.¹⁰ These had their own systems of courts known as *fueros*, wherein they were tried by those of their own class or profession.¹¹

According to the Spanish ecclesiastical law, members of the priesthood of the rank of curate and upward could not be made to appear before a civil tribunal. They could only be judged by their peers, the clergy. The ecclesiastical *fuero* gave an appeal to the bishop and from the bishop to the metropolitan, or from the archbishop to the nearest prelate. If the metropolitan commenced the cause, an appeal would lie to the bishop who was nearest; and, on a third trial, to another neighboring episcopate.¹²

The military were similarly exempt from trial before the constitutional civil tribunals, and the immunity extended to both officers and enlisted men. Those within the military *fuero* had their causes tried before the commanding officers, and on appeal before the supreme tribunal of war and marine. There also was a right of trial or jurisdiction for military misdemeanors before the council of war of general officers. Besides the general military *fuero* there were special *fueros* of war—one for the artillery, another for the engineers, and a third for the active militia of the country.¹³

These exemptions, which were not without abuse by unauthorized persons seeking to evade the law, maintained huge blocks of privileged persons in the community, which

9. Mayer, *Mexico: Aztec, Spanish and Republican*, vol 2, p. 146.

10. *Ibid.*, vol. 2, pp. 146-147.

11. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe*, vol. 1, p. 43.

12. Mayer, *Mexico: Aztec, Spanish and Republican*, vol. 2, p. 146.

13. *Ibid.*, vol. 2, p. 146.

proved a dead weight against any satisfactory effort to administer justice. The laws of Mexico, thus founded upon the old Hispanic colonial legislation and modified in some measure by state and national legislation under the republic, created a vast and complicated mass of legal principles which required a lifetime of studious toil to master and expound. The misuse of constitutional tribunals and specially privileged jurisdictions under the *fueros* created a complication of judicial functions which greatly narrowed the chance of a pure administration of the law.

While the Mexican constitution of 1836 contemplated organization of a *tribunal departmental* with a judge at its head in each Department, with subaltern judges at the seats of the different districts, of which there were two in New Mexico, very little was actually accomplished along this line of organization in this northern Department. So far as known, Lic. Antonio Barreiro appears to have been the only trained lawyer in New Mexico during the entire Mexican period!¹⁴

The occasional sittings of the newly created district court in New Mexico did little to impress the law abiding citizens with the purity of its decisions, as was illustrated by its trial of the postmaster at Santa Fe who had been suspected of dishonesty in office. In December, 1833, Don Francisco Sarracino, political governor of the Department, had become suspicious of the activities of the postmaster, Juan Bautista Vigil, and he sent out his deputies to remove the mail and Vigil's records to his own house for the purpose of investigation. This caused a good deal of unpleasantness at the time, but Vigil was retained as postmaster, evidently as a result of insufficient political influence to convict. However, on October 23, 1835, Governor Albino Perez had occasion to advise Sarracino, who was then serving as *subcomisario*, or deputy justice of the peace, about a complaint filed against Vigil as postmaster by Miguel Sena. Sarracino promptly investigated and reported back to the governor that Vigil had disregarded the law

14. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe*, vol. 2, p. 12.

completely and that he had accordingly removed the postmaster from office and put Mateo Sandoval temporarily in his place.

Vigil and his co-workers were placed on trial before the district court, but the regular judge, Santiago Abreu, was not allowed to sit, nor his associate, Nafero, on alleged grounds of prejudice, and the case was tried before Juan Estevan Pino, who was no friend of Sarracino's. As a result of this "trial" Vigil was cleared and Sarracino was instead adjudged guilty of misconduct. Vigil was thereupon restored as postmaster. Governor Perez, however, was not pleased with the outcome, so he had Sarracino's case brought before the *departmental junta*, or legislative assembly. Pino vigorously fought this move, but the governor won out; Sarracino was cleared and immediately reinstated.¹⁵

When the rebel governor Jose Gonzales of Taos, who had been chosen governor of New Mexico by the insurgents following the Insurrection of 1837, was caught in Santa Fe after the skirmish had ended, he was instantly shot without the least form of trial.¹⁶

As a result of this general confusion, courts of justice were indeed almost unknown in the New Mexico Department. Except for the sporadic attempts of the *alcaldes* to exert their authority in settling disputes, the governor or *jefe politico* for the time being had taken over responsibility for redressing all wrongs, civil and criminal. From the decisions of the governor there was no appeal in either civil or criminal cases, except to the *audiencia* of Guadalajara, some 500 leagues (around 1,500 miles) distant.

Under circumstances such as these little faith could be placed in the integrity of the government and its administration of justice. Few indeed cared to invest their goods or wealth in business, mining or other ventures in the Department. Josiah Gregg, describing this situation said:

Could any dependence be placed in the integrity of the government, I have no doubt that, with sufficient capital and the aid of machinery (such as is used in the mines of Georgia and Carolina),

15. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe*, vol. 1, p. 364; vol. 2, pp. 15-16, 88.

16. Gregg, *Commerce of the Prairies*, vol. 1, p. 136.

the old mines of this province might be re-opened, and a great number of the *placeras* very extensively and profitably worked. But as New Mexico is governed at present, there is no security in an enterprise of the kind. The progress of a foreign adventurer is always liable to be arrested by the jealousy of the government, upon the first flattering bonanza. . . . Americans in particular would have little to hope for in the way of redress; for our government has shown itself so tardy in redressing or revenging injuries done its citizens by foreign states, that they would be oppressed, as they have been, with less scruple because with more impunity than the subjects of any other nation.¹⁷

When the American authorities took over, it required some time before the people could come to understand the new methods employed in the administration of justice. Many years later native New Mexicans occasionally would still present themselves before the chief executive with their grievances, asking that justice be done. Such applicants were generally turned over to the courts. As the people gradually became familiar with the American process they began to appreciate this manner of doing things, and learned to recognize in it a greater security to person and property than they had enjoyed under the old order wherein the same person both made and executed the laws. They began, too, to value their privilege of trial by jury.

CHAPTER III

EMBRYOS OF YANKEE JUSTICE

Brigadier General Kearny appointed a three-man Superior Court as the highest tribunal of newly occupied New Mexico in 1846. For its chief justice he selected a jack-of-all-trades by the name of Joab Houghton who had come to New Mexico from New York state in 1843 as a practical civil engineer. As one of the two men to serve with him Kearny named Antonio Jose Otero, the only person of Spanish descent ever to serve on the Supreme Court before statehood. For the third member Kearny designated Charles Beaubien, who was of French extraction. These three judges served faithfully, though at times a bit erratically, throughout the period of the military provisional government, until March 1, 1851.

17. *Ibid.*, vol. 1, pp. 172-173.

Houghton was only thirty-five years old at the time of his appointment. He was serving at the time of the occupation as the United States consul in Santa Fe. Though not a lawyer, Houghton had read some law as a hobby and did a little legal practice whenever the occasion permitted. About 1845 he also entered a merchandising partnership with Eugene Leiteñsdorfer. During 1846 and 1847 their place of business, located at the corner of San Francisco and Galisteo streets, was considered by many as the leading mercantile house west of the Missouri River. In November, 1847, Judge Houghton purchased the entire stock of goods of St. Vrain and Bent, another merchandising firm, and prepared to continue their business. The novel combination of a civil engineer who, while practicing law, served as chief justice and engaged in commercial pursuits on the side, appears to have drawn no adverse comment from either the politicians or the newspapers of his day. The *Santa Fe Republican* simply commented: "No man deserves more the consideration and respect of the public, and we hope to see him liberally patronized in his commercial pursuits."¹

As Houghton was one of the prominent individuals in the Territory, it is but natural that Kearny upon his arrival selected him as the chief or presiding judge of his provisional civil court. Persons schooled in the law even to a limited degree were scarce in the Territory. After his appointment, Houghton continued residence in Santa Fe. Here on December 1, 1846, he opened the first term of court held by an American judge, J. M. Giddings serving as his clerk.

Soon after Judge Houghton had opened his first court at the capital an insurgent old native by the name of Antonio Maria Trujillo, living near La Cañada, now Santa Cruz, on or about January 20, 1847, became involved in a movement, said to have been part of a carefully devised plot, to upset the American controlled regime and to turn the Territory back to Mexican jurisdiction. The uprising led to assassination of the governor of the Territory, Charles Bent, of

1. Nov. 27, 1847.

Narcisco Beaubien, son of Judge Beaubien, and of others. Judge Houghton went to Taos to assist and sit for Judge Beaubien, who presided over the northern district of the Territory, when the latter was disqualified because of personal interest from conducting the case, perhaps the most famous court trial ever held there under American jurisdiction.

Present at the trial in the primitive court room, and guarded by members of the military detachment under command of a Lieutenant Colonel Willock, were two daughters of the murdered governor; William and George Bent, brothers of the governor; Lucien B. Maxwell of Maxwell Land Grant fame; Richard (Uncle Dick) Wootton, operator of the toll road across Raton pass; Judge Beaubien, and a large number of other prominent citizens. Trujillo was given a trial by jury in the new American way, and convicted. If not the trial, certainly the sentence imposed upon Trujillo will live as one of the most interesting in New Mexico history, serving it is believed, as a model for a famous and much quoted sentence pronounced by Chief Justice Kirby Benedict over a decade later.

The Court spoke as follows:

Antonia Maria Trujillo.—

A jury of twelve citizens, after a patient and careful investigation, pending which all the safeguards of the law, managed by able and indefatigable counsel, have been afforded you, have found you guilty of the high crime of treason. What have you to say why the sentence of death should not be pronounced against you?

Your age and gray hairs have excited the sympathy of both the court and the jury. Yet, while each and all were not only willing and anxious that you should have every advantage placed at your disposal that their highly responsible duty under the law to their country would permit, yet have you been found guilty of the crime alleged in your charge. It would appear that old age has not brought you wisdom nor purity nor honesty of heart. While holding out the hand of friendship to those whom circumstances have brought to rule over you, you have nourished bitterness and hatred in your heart. You have been found seconding the acts of a band of the most traitorous murderers that ever blackened with the recital of their deeds the annals of history.

Not content with the peace and security in which you have lived under the present government, secure in all your personal rights as a citizen, in property, in person, and in your religion, you gave your

name and influence to measures intended to effect universal murder and pillage, the overthrow of the government and one wide-spread scene of bloodshed in the land. For such foul crimes an enlightened and liberal jury have been compelled, from the evidence brought before them and by a sense of their stern but unmistakable duty, to find you guilty of treason against the government under which you are a citizen. And there only now remains to the court the painful duty of passing upon you the sentence of the law, which is that you be taken from hence to prison, there to remain until Friday, the 16th of April next, and that at 2 o'clock in the afternoon of that day you be taken thence to the place of execution, and there to be hanged by the neck till you are dead! dead! dead! and may the Almighty God have mercy on your soul.

JOAB HOUGHTON, Judge.

Filed March 16, 1847.

James M. Giddings, clerk.²

It is to be noted, however, that after the conviction of Trujillo, Judge Houghton signed a petition, along with the United States attorney, the counsel for the defense, most of the members of the jury before whom Trujillo was tried, and a number of other respectable citizens, suggesting that execution of the sentence be suspended until a petition could be laid before the president of the United States seeking pardon for the old man by reason of his age and infirmity. This was sent by Governor Donaciano Vigil to President James K. Polk with a recommendation from him personally for executive clemency. The president, apparently on grounds that the insurgents in New Mexico were not yet citizens of the United States, courteously declined, but suggested that the governor might properly grant the pardon in his stead. No further coaxing was necessary and the old man was spared from the gallows.

An early session of the court held at Taos was described by W. W. H. Davis, United States district attorney in New Mexico during the early 1850's:

At the hour of eleven I wended my way to the court-house, which I found to be a low, rude mud building, and less comfortable than the cow-stables in some of the states. I entered the sanctuary of justice, and took my seat upon one of the three chairs that had been provided for the officers of the court. . . . The room was about forty feet long, fifteen wide, and eight high. There were neither boards nor carpet to hide the earthen floor, which was damp and cold. On the south side were two windows, about two feet square each, and instead of glass,

2. Santa Fe District Court, *Records*, March 16, 1847.

they were supplied with cotton cloth nailed across frames, which answered the double purpose of shutting out both light and dust. In addition to the three chairs there were as many old benches for the accommodation of the bar, officers, parties, witnesses, jurors, and the lookers-on, and those who were not fortunate in the scramble for seats had the felicity of leaning against the walls—none of the best for Sunday coats—or sitting upon the floor. The roof was none of the tightest, and through the openings which were neither 'few nor far between,' could be seen the 'stars in the quiet sky' smiling down upon our deliberations. This was dealing out justice under a heavenly influence. At the west end of the room was the crowning glory of the house, decidedly the most ornamental feature in the establishment, for there the altar of justice was seated. A small nook, some eight feet by four, was partitioned off for the judge; the front was trimmed with a few yards of flashy Marrimac, and, as a matter of comfort, a couple of boards were laid down for a floor. The little place that held all that was mortal and immortal of his honor, much resembled a sentry box, but was inferior in point of equipments. A small pine table in front was used by the clerk, marshal and lawyers. When I first entered the room, and saw on one side a number of persons squatting upon the ground, and upon the other a man to whom all eyes were turned, fastened up in a cage, I was not certain that I had not made a mistake and intruded into the sanctuary of the Grand Llama of Thibet, who was now seated in his box, and about to receive the adoration of his subjects, instead of entering a court of justice.³

Judge Houghton's dockets and other records of his court from 1846 to 1851 give ample evidence of his meager education in the law. The entries were crudely made; orders, judgments and decrees are entered in strange form; and in many instances his methods of dispensing justice were unsatisfactory both to himself and to the litigants. His court promulgated no rules of practice for the guidance of the lawyers, and the bar itself with two or three exceptions knew even less than the judge of the principles and theory of the law. Judge Houghton, too, did not have a free hand in administering or interpreting the laws in view of the constant presence of the military authorities who wielded a powerful check-rein over the civil administrators. In various instances orders and decrees of the courts were not executed due to interference from the military in one form or another. When the Santa Fe County grand jury met in October, 1847, its report contained the following pertinent and fearless observation:

3. W. W. H. Davis, *El Gringo or New Mexico and Her People* (Santa Fe, The Rydal Press, reprint 1938), pp. 159-160.

They [the grand jury] have found the Honorable Court which they now address has virtually acknowledged the existence of a superior authority by refusing to issue a writ of habeas corpus in behalf of a citizen. They do not wish to be understood as casting a reflection on the course the Honorable Court has thought proper to pursue; on the contrary, they recommend that all collision between the Civil and Military authorities be particularly avoided.⁴

This limitation of the judicial authority, together with the general uncertainty then existing as to what eventually would be the status of New Mexico with reference to the United States, made Judge Houghton's experience and that of his colleagues on the bench a not altogether pleasant one.

During Houghton's incumbency as Chief Justice, Congress was debating the question of Texan claims to Territory extending to the Rio Grande now included in New Mexico, and the ever increasing issue of slavery extension to the newly acquired areas. He had always been a bitter foe of slavery, and openly stated that any owner of slaves who should bring negroes into New Mexico would be ruined, that no means existed of making them earn their subsistence in competition with the cheap native labor, and that their introduction would produce a most deleterious effect upon the morals and the industrial interests of the region. By these outspoken views the judge made himself thoroughly unpopular with the southern members of Congress.

A statehood party, seeking annexation of New Mexico to the United States as a state rather than as a territory, was organized in opposition to the movement headed by Houghton, James Quinn, W. Z. Angney and others. Each faction sought support among the prominent native citizens and made extravagant promises of political reward. In the spring of 1850 tension grew so serious that President Zachary Taylor dispatched Lt. Col. George A. McCall to New Mexico to promote the statehood movement. However, after sizing up the situation, McCall came to the conclusion that his only hope of succeeding in his mission lay in winning over the stronger territorial faction. Consulting with Judge Houghton, McCall cagily observed that President Taylor wanted New Mexico to become a state to settle the slavery

4. *Santa Fe Republican*, Oct. 20, 1847.

question in the Territory and further to compose the New Mexico-Texas boundary dispute. After some three weeks of negotiation with the judge, McCall reported to Washington that the territorial party had expressed a willingness to compromise with the statehood party. However, it does not appear on what basis Houghton was willing to go along with the statehood group.

The Texas authorities became alarmed at the political agitation in New Mexico, for it was clear enough that neither faction was holding out the olive branch to their demands. One Robert Neighbors was accordingly sent to New Mexico with a scheme of promoting county elections to place Texas sympathizers into key positions throughout the area. Neighbors protested vigorously to the military commander, Colonel John Monroe,⁵ for calling an election for delegates to a constitutional convention. While Neighbors was thus engaged, Judge Houghton advised the people to disregard Neighbor's trumpeting and recommended instead that they hold mass meetings to protest any and all Texas claims. Neighbors soon realized that his presence only tended to increase the solidarity of the two factions by welding a common field of resistance to the Texas scheme. Actual fusion of the two factions never completely materialized, however, on account of opposition from Richard Hanson Weightman, leader of the original statehood party

The constitutional convention for New Mexico, against which Neighbors had protested, was approved by Colonel Monroe, after a petition had been submitted to him by Judge Houghton requesting the governor of the Territory to call a convention to form a state constitution. Colonel Monroe issued his proclamation calling for an election of delegates on May 6, 1850. Twenty-one delegates assembled at Santa Fe on May 15, 1850; a few of these were from Weightman's faction, but Judge Houghton controlled a majority. The convention was in session for ten days, during which time the constitution was framed, written for the most part by Judge Houghton himself, as the "legal talent" of the convention. After formulation of the constitution, which con-

5. Name is sometimes written thus and sometimes Munroe.

tained a declaration against slavery, Houghton secured the adoption of a separate resolution declaring that slavery would be impracticable in New Mexico, that it would prove a curse and a blight upon the new state just as it was on every other state upon which it had been afflicted.

As to the claims of the Texans, the convention went on record as denying any title of that state to any part of New Mexico whatsoever. A native of New York, Judge Houghton clearly reflected that state's opposition to the claims. This conviction he retained and at the beginning of the Civil War he promptly took a leading role in rallying support for the Union in New Mexico against the Texans.

During the period when strenuous efforts were being made to gain admission for New Mexico as a state, Weightman's fiery disposition caused him to become a rather severe critic of Judge Houghton as leader of the opposition party. Weightman not only attacked the judge in speeches and conversations throughout the Territory but also filed charges against him with Colonel Monroe, as military governor, asking for his removal from office. Houghton soon learned of this onslaught and immediately sent a subtly worded challenge to Weightman for a duel. The challenge in its wording fails to mention the charges filed with Colonel Monroe, but accuses Weightman of having slandered Houghton. The judge's idea for thus squaring matters with Weightman may have come from his acquaintance through the law of the old English "wager of battle," a method employed to settle disputes in medieval times. Houghton's challenge read:

Santa Fe, September 9, 1849

Sir:

In consequence of slanderous words used by you in conversation with Lieutenant Taylor, at the Sutler's store, in Albuquerque, with J. L. Hubbell, Esq., at Socorro, at Santa Fé, and generally throughout the territory, within the last few ———, I demand of you an unequivocal retraction of such slander, or the satisfaction due from one gentleman to another.

J. HOUGHTON.

R. H. Weightman, Esq.⁶

6. R. E. Twitchell, *Military Occupation of the Territory of New Mexico* (Denver, Smith-Brooks company, 1909), p. 172.

The letter came as a surprise to Weightman, who promptly responded to the "learned fountain of justice," as he derisively nicknamed the judge. Weightman sent his reply through James H. Quinn, whom Houghton had designated as his second for the duel.

The letter from Weightman in its nature added fuel to the fire by accusing Judge Houghton of receiving a large sum of money, in the neighborhood of \$3,400, for a client in his private practice, and of not paying the same over to his principal. The letter ends with this paragraph accepting the challenge:

In conclusion I have to say that in consideration of the fact that Mr. Houghton occupies at this time the important position of chief judge of this Territory, and is recognized as a gentleman by persons of high standing, yourself [Quinn] among the number, I feel myself at liberty to accept the latter of the alternatives he has been pleased to offer me. I accept his challenge, and will meet him this day at as early an hour as can conveniently be agreed upon between yourself and the gentleman who will hand you this.⁷

In the duel that followed in an arroyo near where the Santa Fe stadium now stands north of the city, Weightman alone fired at the word of command. The judge, who was a bit deaf, ducked his head after the bullet zoomed past, and shouted, "I didn't hear the command to fire."

"All right," responded Weightman, holding up his hands, "you have the right to shoot. Fire now." The seconds rushed in to stop the deadly yet foolish proceedings and to induce Weightman to apologize. "I'll apologize as far as being sorry is concerned," said Weightman, "but I can't take back what I said, judge, for it was so." The judge was willing to accept this as an apology, but declared that if Weightman ever again insulted him on the bench he would shoot next time to kill.⁸

There was perhaps an overzealous and probably unfortunate tendency among the judges of the pre-territorial court to impress their judicial authority upon the church officials. The latter, accustomed for the most part to an extensive degree of freedom in handling their own disputes through the ecclesiastical *fueros*, considered such attempts

7. *Ibid.*, p. 174.

8. *Ibid.*, p. 392.

as an invasion of their rights and unwarranted civil interference with their authority. Mr. Weightman lost no time in bringing the complaints of the church officials, particularly those of the Vicar Don Juan-Felipe Ortiz, who at the time was the leading ecclesiastical power in the Territory, to the attention of Washington chieftains.

One particular complaint leveled against Judge Otero was to the effect that he took it upon himself as judge to restore and distribute curates to certain priests who were under suspension by the church. Two of these priests, Fathers Benigno Cárdenas and Nicolas Valencia, who had been stationed at Belen and Tomé respectively, and had been dropped from the fold, appealed to Judge Otero's court. The judge heard their cases and reinstated them, thereby expelling the two priests, named Baca and Otero, who had already replaced them pursuant to directions from the church authorities.

There is no official record of any session of the Superior Court, although there were at least four such terms, but a printed opinion by Judge Otero appears in the *Santa Fe Republican*,⁹ a case in which Judge Houghton, interestingly enough, serving as the administrator of Juan Andres Archuleta, was the appellant. The action was founded in the common law action of debt, but the most significant legal propositions decided were procedural and dilatory. The appellant had filed a motion to remove the appeal from the docket at Santa Fe and to continue it until a later time during the term so it might be heard by the Supreme or Superior Court sitting in the southern district of the Territory, as it could do at that time. The appellant contended he had a right to have his appeal heard in the southern district because the case had been appealed from there. Judge Otero overruled this argument since under the construction which he placed upon Kearny's statutes on the subject, there was "but one Supreme Court in the Territory" and that its jurisdiction extended to all three districts composing the circuits.

9. Juan Andres Archuleta v. Manuel Armijo, *Santa Fe Republican*, Sept. 12, 1848.

The places at which the courts were held [he declared] were evidently established for the convenience of the members of the court, and can in no wise impair powers, or create any distinction such as the motion would imply. Were the grounds taken by counsel in his motion correct, there would be three separate and distinct superior courts which is clearly not the case.

Judge Houghton and his two colleagues continued to serve until after New Mexico had been elevated to the dignity of a Territory by Congress in 1851. Governor James H. Calhoun, upon taking office, declined to allow them to function further, maintaining that the "Superior Court" had been abolished by the provisions of the Organic act creating the Territory of New Mexico. Whether this removal from office subsequently influenced Judge Houghton in seeking removal of Governor Calhoun, or whether his opposition to the governor grew solely out of Judge Houghton's opposition to slavery and the fact that the governor was from the south, is not known. He advanced serious accusations, one of which was to the effect that the governor had aligned himself and his friends with the Catholic Hierarchy and with wealthy natives against the Anglo-American residents of New Mexico. He also made the charge that the governor intermeddled in territorial politics.

After his removal from office, Judge Houghton continued for some time in the practice of law at Santa Fe, having formed a partnership with Hugh N. Smith. During this time he took a hand in the organization of the Historical Society of New Mexico. He was named register of the United States land office at Santa Fe in 1861. Soon after September 19, 1861, he was named the wartime district attorney for New Mexico, and as a militant northerner, he drew indictments for treason against several prominent citizens who had shown signs of southern sympathies. None of these, however, was ever convicted of the charges.

In 1865 Judge Houghton was again appointed to the Territorial Supreme Court as an associate justice to preside over the southern or Third Judicial district. He continued his residence in Santa Fe during most of the time he held office, contrary to the provisions of Section 10 of the

Organic Act. This brought him under attack from various quarters. While thus officiating as judge he had brought before him some suits under an act of Congress approved March 3, 1863, which authorized confiscation of property from Confederate sympathizers. By his rulings in these cases Judge Houghton laid himself open to some of the severest criticism that has been directed against a New Mexico Territorial judge. Rulings which received severest criticism held:

(1) that the third judicial district of New Mexico had jurisdiction over the citizens of El Paso County, Texas, for purpose of confiscation of their estates under Federal statutes directed against Confederate sympathizers

(2) that the proceedings in confiscation were similar to and were governed by the law of libel as in admiralty and that such causes could be heard *ex parte* and tried by the court without the benefit of jury.

These rulings arrived at by the judge undoubtedly were a reflection of his incomplete understanding of the law. Said the *Santa Fe New Mexican* for December 15, 1865:

It is now clear that Judge Houghton is wanting in all the essentials necessary to a speedy and satisfactory administration of justice, and his appointment to the bench is but another evidence that those not bred in the law should not be intrusted with its administration.

By the decisions, the *Weekly New Mexican* deplored, "the sacred provisions of the Constitution are set at naught, and that glorious instrument, the safeguard of our liberties, received a fatal stab." A correspondent of one of the Santa Fe papers, reporting upon one of these trials from Mesilla where they took place, wrote:

His acts are without a parallel in our judiciary and have but one in the world, that of Lord Jeffrey during the Bloody Assizes. The authority for such an unwarranted usurpation of power can only exist in the mind of the learned judge, for it cannot be found in the books.¹⁰

As a result of these proceedings Judge Houghton's district court soon acquired the nickname of a "prize court,"

10. N. M. Bar Association, *Minutes*, session of 1891. Report of Committee on history of bench and bar (Santa Fe, 1891), p. 39.

and so great became the indignation in certain quarters that the judge, the U. S. district attorney, Theodore D. Wheaton, and the U. S. marshal, Abraham Cutler, who participated in these trials, were denounced to their faces as unmitigated scoundrels and as corrupt officials.

No matter what may have been the persuasive factors resulting in Judge Houghton's rulings, examination of a cost bill which has been preserved in one of these confiscation cases, reflects the exorbitant nature of the charges:

Marshal's fees in the case of the United States vs. the property of Jesse Slade Franklin:

For the hire of herders, houst rent, etc. -----	\$325.00
For charges and responsibility of property, 40 days at \$10 per day -----	400.00
For serving monition on same -----	10.00
For mileage, for going and returning from the Cotton- woods, 40 miles at 50 cents per mile -----	20.00
For publication in <i>Santa Fe Gazette</i> -----	30.00
Total -----	\$785.00 ¹¹

The records show that the property which was "herded" etc., consisted of eight yoke of oxen and five mules.

By January, 1869, feeling towards Judge Houghton had become so bitter that a memorial was introduced and passed by the legislative assembly addressed to the President of the United States seeking Judge Houghton's removal from the bench and at the same time asking for the appointment of John D. Bail of Grant County in his place.¹² As the alleged grounds justifying his removal, the memorial set out that the judge did not reside within his judicial district, had neglected his duty by not holding court in some of the counties within his district, had shown excessive partisanship for Andrew Johnson, engaged in private practice of law while upon the bench, and had proved himself incompetent through illegal and erroneous judgments in many of his decisions.

He was removed that same year, being superseded by Abraham Bergen under appointment from President Grant. During his entire two terms upon the bench Judge Hough-

11. *Ibid.*, p. 40.

12. *Leyes de Nuevo Mejico*, Apendice, 1868-69, p. 21.

ton appears to have filed but one written opinion. That was in the case of *Archibeque v. Miera*, 1 N.M. 160, which was decided shortly before he was succeeded by Judge Bergen.

Judge Houghton was an outstanding critic of Congress and the national administration in their treatment of the Spanish and Mexican land grants in the Territory. He felt rather strongly that the Federal government was violating its international and constitutional obligations under the Treaty of Guadalupe Hidalgo by cutting down the size, and in some instances completely rejecting, land grants claimed by citizens of the Territory which had been made to them during the Mexican regime. Writing for Elias Brevoort's propaganda pamphlet on New Mexico, Judge Houghton observed in 1874:

The people of New Mexico have just ground for complaint, not only on account of the course of procedure adopted by the administrative officers of the Land Department of the government respecting their grants of land derived from their former government, the Republic of Mexico, but also the evidently erroneous, if not unconstitutional legislation of Congress in assuming to cut down and curtail the area and extent of these grants in several instances to less amount and extent than that ceded by the government of Mexico, and in which they have been placed in judicial possession by the legal officers of that government years before the acquisition of the Territory by the United States, under the treaty of 1848, between the two governments. Such legislation has not only operated oppressively and injuriously on the interests of the numerous holders and occupants of these grants, but upon the prosperity of the whole people of New Mexico, by creating doubt and confusion as to all titles to lands in the acquired Territory of New Mexico, granted to them or their predecessors as citizens of the Republic of Mexico; and by them held and possessed as *bona fide* grants, and as such considered and respected by the Government of Mexico up to the date of the transfer of her sovereignty over the Territory, to the United States.¹³

Reviewing the provisions of the Treaty, Judge Houghton pointed out that these meant that "property of every kind *now* (i.e., at the date of the Treaty) belonging to the Mexicans" was required to be inviolably respected, with equal guarantees, as if the property belonged to citizens, whether they retained their character as Mexicans or became nationals of the United States. It was Judge Houghton's

13. Brevoort, *New Mexico* . . . , p. 176.

feeling that Congress through its legislation sought to alter the meaning, intent or obligation of the treaty.

"Would it not," Judge Houghton deplored, "be a stain upon the nation's faith, and an outrageous invasion of the private vested rights of these acquired Mexican citizens and their heirs and assigns, to legislate a proviso into the treaty of Guadalupe Hidalgo?" Judge Houghton took particular exception to legislation which had in effect interpreted the Mexican colonization law of 1824 as restricting grants to individual colonists to eleven square leagues of land or less. He pointed out that the colonization law had been passed to encourage foreigners to settle in the Mexican territories, and concluded that a restriction contained in Section 12 of the law was intended to restrict foreigners only, and that it in no way restricted citizens of Mexico to eleven square leagues. Judge Houghton substantiated his views with observations that the grants made in New Mexico not only failed to make reference to the decree of 1824, but seldom even mentioned the size or extent of the grant sought in terms of leagues or other measured distances, but were described instead by means of land marks or artificial monuments erected for the purpose by the officers placing the grantees in possession.

After his retirement from the bench the second time Judge Houghton continued the practice of law in Santa Fe. He moved to Las Vegas in 1874. On May 18 of that same year, however, he appears to have been back in Santa Fe, and, at least temporarily, opened and maintained a law office in a building next door east of the *Santa Fe New Mexican* office. He died in 1877, at Las Vegas.

Summing up Judge Houghton's career, the historian Ralph Emerson Twitchell, says:

All in all, he was a fairly good man. He had his faults, but they were not glaring. He tried to do his duty as a judge and if he failed it was purely through his lack of legal knowledge and not with an intention to wilfully wrong any man.¹⁴

(to be continued)

14. N. M. Bar Association, *Minutes*, sixth annual meeting, 1891 (Santa Fe, 1891), p. 44.

JAMES A. BENNETT: A DRAGOON IN NEW MEXICO,
1850-1856

Edited by CLINTON E. BROOKS and FRANK D. REEVE

INTRODUCTION

The original manuscript of this publication is in the possession of Clinton E. Brooks who obtained it from Elizabeth Warfield Bennett, daughter of the author, James A. Bennett. The document was transcribed for publication by Mr. Brooks. Elizabeth Bennett contributed most of the biographical data about her father. Explanatory footnotes have been added, but no attempt has been made to make them exhaustive in the bibliographical sense. Those contributed by Mr. Brooks are marked by his initials, in parentheses, the others belong to the co-editor. All explanations of the army rank of individuals mentioned in the text, unless otherwise indicated, are taken from Francis B. Heitman, *Historical Register and Dictionary of the United States Army*, (Washington, Government Printing Office, 1903), vol. I. The first citation to a source is made in full bibliographical form; subsequent citations to the same work are shortened to the last name of the author and an abbreviated title.

Mr. Brooks states, "Dr. James A. Bennett apparently copied his notes, after some years had elapsed, and destroyed the originals." The dates in the manuscript are often incorrect, and where possible will be so indicated in the footnotes, but the manuscript as a whole has the flavor of the Southwest in the mid-nineteenth century, and affords an interesting historical account for that time and place.

In the words of Elizabeth Warfield Bennett, her father was born at East Avon, New York, January 8, 1831. At the time he was eight years old his father, Augustus A. Bennett, was robbed and murdered. This left my grandmother with three girls and three boys to support. Maria Pierson Bennett moved to a home on Prince Street in Rochester, New York, where she made a living by taking boarders. James supported himself by going from one relative to another to work a little and have his board. When he was eighteen he was visiting his

mother in Rochester and so became aware of her financial need. Gold had just been discovered in California and that fact, together with his mother's hardship, was too strong a lure for him. He enlisted under the name of James S. Bronson because he was afraid his mother would not let him join the army in order to get to California.

Bennett enlisted in November, 1849. The following summer he was assigned to the 1st Dragoons and sent to New Mexico where he served for eight years. The memoirs end in 1856, after he had spent time in a hospital. Elizabeth Warfield Bennett writes:

He told me that he was sick again in the hospital at Albuquerque. Although he was on duty for two more years, his ill-health continued and rendered him unfit for his arduous army duty. Following the termination of his army service, he journeyed south into old Mexico in a desire to gain strength and wealth before returning to the States. While there he made good as a practical doctor and Trader. On his homeward way, all his possessions were seized or destroyed by Comanche Indians who demolished the Mexican wagon train with which he was traveling. His companions were killed but father escaped with his life but without arms, money, or means of transportation. He walked to Texas, borrowed money and finally reached Lima, New York, where he took up the study of medicine under his brother, Dr. George Bennett. He graduated from the University of the City of New York where he finished his medicinal studies just before the Civil War. He served as a doctor (Assistant Surgeon) in the New York Heavy Artillery Regiments during the war. He then took up the practice of medicine at Prattsburgh, New York. . . .

Dr. Bennett married Rowena E. Warfield on September 19, 1860. She died on December 19, 1889. In partnership with her brother, Myron Frank Warfield, he operated a drugstore, and was also active in fraternal order and civic affairs.

A nephew, Brigadier General Augustus Bennett Warfield, writes of his uncle:

He was a member of the Masonic lodges at Lima and Prattsburgh, at which latter place he was Master for four years. He was the first Commander of the Macabees at Prattsburgh, and also was Commander of the G. A. R. Gregory Post there. He received the first telephone message that came to Prattsburgh.

He was a country doctor of the old type, practicing in the small country village of Prattsburgh . . . where he and his wife, Aunt Rowena, took me into their home when I was five years of age.

Ofttimes I sat in wonderment listening to tales of his soldier and Indian adventures, in the far away southwestern territory where he was twice wounded . . . both times while he was on scouting duty with that famous Indian Scout, Kit Carson.

Despite the hardships of army life in the Southwest in his time, Dr. Bennett lived a long life. He died on January 14, 1909.

Nov. 22, 1849.—Wandering through the streets of Rochester, New York, I met a soldier. After making some inquiries of him in relation to the service, I concluded to go to the rendezvous where I was informed that soldiers received good board, clothing, medical attention; had nothing to do but play the gentleman; and that those then enlisting were destined for California. I was elated with the idea of going to the "land of gold." I was sworn in to serve my country for five years and in one half hour had on my military garb.¹

Nov. 23.—Today come my sober thoughts. I must leave home, friends, and companions, perhaps forever. Regret the step taken yesterday but 'tis too late, go I will. Disposed of everything I had pertaining to civilian life. Intend to live up to my profession but time goes heavily. Anxious to leave.

Nov. 26.—Today joined a recruit who looks as though he were on the verge of "Delirium Tremens." He was ordered to wash and put on clean clothes. A number of us examined his old clothes in the yard and found them literally alive. *The man must have been fond of company.* In the eve he indulged in a little too much of the "O be joyful" and

1. "James A. Bronson, Private, age 21, eyes, blue, hair, brown, complexion, fair, height 5 feet 8 $\frac{3}{4}$ inches; was born in Avon, New York. His trade or occupation was farmer. He was enlisted by Capt. Hamilton for a period of five years on Nov. 22, 1849." Head Quarters Instruction, July 2, 1850, *Muster Roll Records*, War Department Files, National Archive, (C. E. B.) All muster roll references in footnotes are to records in the War Department Files, National Archive.

probably from sheer regret wanted to cut his own throat with a razor but was prevented.

Nov. 27.—For the first time since my enlistment, I ventured on the street. Accidentally I met my mother² and a niece of mine but fortunately was not observed by them although I passed within a few feet of them. For worlds I would not have had them see me. I concluded to go out no more.

Dec. 12.—Today preparing my travelling paraphernalia which consists of Wardrobe: 1 flannel shirt, 1 pair of socks; Bedding: 1 blanket; Toilet: 1 old comb. Expensive as well as extensive! Took cars for Albany enroute for New York. For the first time strapped on a knapsack, making myself resemble a beast of burden. But fortune favored me. 'Twas dark when marching through the streets. I saw no one that I knew.

Dec. 14.—Arrived yesterday at Albany and there took boat down Hudson River for New York. Arrived at Governor's Island,³ New York. Was shown a room in which I was to live. A long, narrow, desolate appearing place. The only furniture was composed of "two-storied bunks" of bedsteads without such a thing as a tick, nothing but the bare boards on which to rest one's weary bones. The room contained from 60 to 70 persons from all quarters of the globe, Ethiopia excepted. Night came. I sat me down to observe. First was heard a Dutch song by a group of German representatives. In another place is heard the "Sacre, Mon Dieu!" which emanates from a dark, curly headed Frenchman. We next hear a witty story, from a son of Erin's Isle, interrupted of course by long whiffs of smoke from his stump of a pipe. In another portion of the room is seen in earnest converse a party of Poles and Hungarians, perhaps sympathizing with each other upon their countries' recent annexation by Austria.⁴ We also see an Englishman com-

2. His mother was Maria Pierson Bennett (C. E. B.)

3. Governor's Island, a "small fortified island in New York Bay, south of the Battery, and at the entrance to East River." It was used as a residence by colonial governors, hence its name. *The Encyclopedia Americana*, 1945 edition.

4. Austria participated with Prussia and Russia in the first partition of Poland in 1772 and the third partition in 1795. Hungary lost her independence to Austria in 1849.

plaining of the bill of fare while at one corner of the fireplace sitting "solitary and alone" whittling and whistling is a Yankee right out of Vermont.

Dec. 15.—Awakened this morning by a great noise and found that I actually had to get up and answer my name to let them know I was still at home. The noise was occasioned by 12 or 15 drums and fifes. Went immediately to breakfast and found a bowl of fluid resembling coffee, a small piece of fat pork and a piece of bread that would scarcely satisfy a hungry mouse. At 8 o'clock the cry was heard: "Turn out the recruits for drill." I among the rest. We were divided in parties of 10 and each party had its instructor. Mine happened to be a Dutch "Lance-Corporal" having the least command of any non-commissioned officer in the army but he exhibited all the pomposity of a Negro Preacher.

Dec. 25.—Christmas. In the morning we were informed that we would not drill and that we would have an extra dinner. Our hopes and expectations were raised high. Dinner came! Of what did it consist? *Boiled beef, cabbage, and potatoes* but what we had not had before, plenty of it.

Dec. 30.—Sunday. Rest from drill but march to church with two brass bands of music. I find 4 hours drill rather severe exercise daily.

Jan. 10, 1850.—Getting reduced in spirit and flesh. We actually in this land of plenty suffer for something to eat. I saw 8 or 10 men find upon the beach the carcass of a sheep, a portion of which was in a state of decomposition. They took it to their room, cooked it, and ate it. Horrid! But they were driven to it from constant hunger and want.

Jan. 27.—Last week Saturday night the small boats of the Island were taken. 8 men deserted. 3 of them were brought back. These deserters were tried by a Court Martial, sentenced to "Forfeit all pay allowances that are or may become due, to have their heads shaved, to be branded on the left hip with the letter 'D,' to receive fifty lashes with a rawhide upon the bare back, and to be drummed out of the service."

Jan. 28.—The above sentence carried into effect. Whipped in presence of us all and followed by 3 men at a charge bayonet. Music for the occasion was played. Only think! Men to be treated this way because they would not submit to being almost starved to death.

Feb. 6.—A military funeral! A soldier dead! 'Tis a solemn spectacle. No friend mourned at his bedside; no mother wept over him; no brother clasped that hand to bid a last adieu but he died. His heart beats no more; his eye is dimmed, and those lips are sealed forever. His spirit has flown and no friend near to witness it. We, his fellow soldiers, followed him to his last resting place. To the "Dead March" we slowly tread. Three rounds are fired over his grave. We turn and march to "quick time" from his grave, resume our duties, and by one half hour's time all is forgotten.

Feb. 22.—A number of the youngest recruits were chosen to learn the fife and drum. I was one of them. I was sent to new "quarters" among a company of 60 or 70 boys. They asked me the instrument I would learn. Not intending to learn either, I told them the drum. I was pleased at the change. The fare was better and I had a straw bed. I had no more drill but practice of the drum 2 hours per day.

March 15.—Last night there was a dance in one portion of our quarters. There was a grand supper in our kitchen and mess room. It has been some time since my eyes have feasted upon such viands. A comrade and myself watched the cook and the moment that opportunity presented we were determined to make use of our time, we not having been allowed to partake. To shorten the story, we each by light-fingering got a roasted duck and a smoked tongue. We to avoid suspicion went and hid our spoil, but alas, someone had watched us, for in a half hour when we went to regale ourselves upon the ducks they were gone. My heart was broken for in these days *meat is gold*. On account of our freaks we were sent away once more to join the recruits and sleep upon hard boards.

March 23.—Got leave of absence for 24 hours to visit New York City. Went over this morning in a small boat. Spent the day seeing the sights of the city.

March 25.—9 o'clock yesterday morning I should have been back on the Island but I was not half through sight-seeing although I was ashamed of my clothing. No one here knows me, however. Went back to Island 24 hours behind the time. A bottle of brandy made it all right with the Orderly Sergeant. Went down to the wharf, found a man in search of a painter. I recommended myself, got a job of \$7 to supply me with means to buy something to eat.

April 15.—Today fired a national salute from the castle.⁵ Had a visit from a Commander and his crew of a Swedish Man of War vessel.

April 20.—Today paid off. The Island swarmed by drunken men. 170 men tied up by the thumbs. One man through mistake took a large drink of corrosive sublimate, supposing it to be whiskey but did not die, however.

April 23.—A rather comical person, named Theodore, came on the Island. He appeared to be deranged. This morning Theodore was ordered out to drill. He would not go. He said he had only come to look on. The Corporal tried to force him, he resisted and struck the Corporal. A Court Martial was in session. He was tried and sentenced to walk a ring with 40 lbs. weight on his back for 30 days. When he entered the court he appeared to be searching under the table and other places. The President asked him his object. He said he was looking for justice. Did he find it!

June 1.—Last night for the first time I was put on guard as a sentinel. My post terminated at one end at "Castle William," an old desolate building of which stories are told that "strange noises are heard," "it is haunted," and so forth. At the other end was the graveyard. At one side of my post the surging billows washed the dull unchanging shore while on the other side was an open space used sometimes as a parade ground. I took my post at 10 o'clock. The heavens grew black. The Storm King reigned supreme.

⁵. Castle William is a fort on Governor's Island; its construction was completed in 1811. (See footnote 3).

To shelter myself from the storm I took refuge in one of the post holes of the old castle. But a few moments had elapsed when the reported sounds commenced. Perhaps 'twas imagination. Cold drops stood upon my brow. I could not endure it long. I left the shelter preferring the storm to unnatural sounds, ghosts, and hob-goblins. I pursued my course toward the graveyard. My nervous system had been affected. When vivid flashes of lightning brought to my view the tall monuments, fear again seized possession of me and I concluded to leave the extremities of my post alone. So I seated myself about the center, pondering in my mind the chances of escape. While sitting there an unusually bright flash came on. I saw something on the beach which attracted my attention. I approached it. As I stood quite near, straining my eyes to see it, came another flash and to my horror it was the corpse of some person who had floated ashore. What a dilemma! I trembled violently but just then to my satisfaction came the "relief." Another soldier had the pleasure of remaining two hours where money could not have hired me to stay!

June 2.—The inmates of the Castle William complain of those noises during the night, like unto a great quantity of cannon balls rolling promiscuously about. When they enter the room, the balls are there but silent and unmoving. The superstitious, especially the ignorant, tell strange stories such as "Last night a woman clothed in white made her appearance in the castle." Humbug!!! Although I was frightened out of my wits.

July 2.—Today we were all formed in ranks and 74 of our number were chosen for Dragoon service. I was one of the fortunates who must now learn to fight either on foot or on horseback. No more Foot Drill for me. Was informed that the Dragoons were to leave the Island the 12th of this month. Wrote to my friends to be on the look-out as I was to pass through the state of New York by railroad en route to Santa Fe, New Mexico. Great preparation for the journey in prospect.

July 12.—The long looked-for day at last arrived. Without one regret I left what had been my home for some time.

We proceeded to Fort Wood and from there to New York.⁶ Our detachment numbered 274. Took boat up Hudson River for Albany.

July 13.—Arrived at Albany. During the night the soldiers had found a demijohn or two of liquor and appropriated it to their own use. A number of them were drunk and they were not allowed in town but they forced the sentinels and such scrambling and tumbling into the river, I never saw before. When we were called upon to march to the railroad, some were not to be found and others insensible to the troubles of this world. We formed our ranks, commenced marching through Main Street. Some were scarcely able to walk with their knapsacks strapped upon their backs, and to cap the climax we were followed by three drays loaded with drunken soldiers. We reached the depot and all were confined within the gates. Here were 2 barrels of whiskey and 4 of ale. Before the officers were aware of it, the barrels were nearly empty. Soon the cars started. The drunken men were all placed in one car. I was to take charge of one door of said car. I looked in for my own satisfaction. I saw one man trying to jump out of the window but he was so intoxicated he fell back into the car. Some five or six others were fighting and such a scene I never witnessed before.

July 15.—Passed Batavia yesterday. Met my sister, Mary. She burst into tears, presented me with her portrait and I left, perhaps never to see her more. I must confess a tear trickled down my cheek and my heart swelled for a moment with emotion. The farewell was spoken. Once more, I was alone. Arrived at Buffalo. Took boat for Detroit. Had a chill of ague. On the lake was awful sick, fever and ague, with the motion of the boat making it worse.

July 17.—Arrived at Detroit yesterday. Took cars for New Buffalo. At the stopping places the soldiers ran into the saloons, called for what they wanted and told the pro-

6. "This detachment of recruits left the depot at Fort Wood, Bedlows Island, under 2d Lieut. Samuel D. Sturges, 1st Dragoons, accompanied by Lieut. George H. Paige, 2d Infantry, on the 15th of July, 1850. There were 107 recruits in the above detachment including the name of James A. Bronson." Muster and Descriptive Roll, Headquarters Reg. Service, New York, 9th August, 1850, in *Muster Roll Records*, (C. E. B.).

prietors to charge it to "Uncle Sam." At New Buffalo, took boat for Chicago where we arrived during the night.

July 21.—Thursday morning changed from steam boat to canal boat. Slow dull travelling. In fact travel is so slow that men have the best kind of opportunity to jump off the boat, fight, and again overtake the boat. Yesterday arrived at Lasalle where we took steam boat for St. Louis, Mo. During this time the soldiers had a fight with the steam boat men. One or two were pretty badly hurt. Arrived this evening at St. Louis.

July 22.—In the night we arrived at Jefferson Barracks.⁷ We were put into some stables to sleep on straw or on the barn floor. 8 or 10 men taken with the Cholera. One man got drunk and was found dead in a little stream of water. In the evening put on board another boat for Fort Leavenworth up the Missouri River. Had the roll called and found we had lost by desertion and death 104 men since leaving New York.

July 25.—Since leaving Jefferson Barracks had many new cases and 9 deaths from Cholera. The men were nearly all panic stricken. Got ashore at Fort Leavenworth, a military fort on the bank of the Missouri River. Garrisoned by 2 companies of Dragoons, 2 companies of Artillery, and 1 company of Infantry. The Fort swarmed with Indians. Our sick were placed in Hospital there while we moved 3 miles from Fort to Salt Creek and formed an encampment. Were joined by 200 recruits from Newport, Kentucky. Fort Leavenworth is the military depot for the Plains, New Mexico, and the West.

August 3.—Shortly after arrival we received each one a horse, saddle, bridle, rifle, pistol, and sabre. Now fully armed and equipped as the law directs. Cholera raging to an awful extent among us. Men at active pursuits one day are our active companions and friends; the next day they are a loathsome mass, thrown coffinless into the yawning pit. We wrap 4 to 5 daily in their blankets, and throw their

7. Jefferson Barracks was established at St. Louis, Mo., in 1826, and was named in honor of Thomas Jefferson. For a detailed story see Henry W. Webb, "The Story of Jefferson Barracks," *NEW MEXICO HISTORICAL REVIEW*, XXI, 185-208 (July, 1946). The title of the *REVIEW* will hereafter be abbreviated to *N. M. H. R.*

remains in the ground with a blessing or a prayer. No stone marks their last resting place. Consternation seized the camp and desertions continued in gangs from 3 to 8.

August 7.—Sent into Missouri in search of deserters. Travelled until night. Came to a grove, dismounted, tied my horse, went into a corn field, helped myself, came back, built a fire, roasted some corn, and ate my fill. Laid down and slept beneath the trees as pleasantly as if I were at home on my feather bed. Morning came. I went to water my horse and found a spring house well supplied with milk and butter. My two companions and I helped ourselves to a small pail of butter. Took pail and all and left in a hurry. After travelling 8 or 10 miles, came to another corn field, helped ourselves to corn, bought a loaf of rye bread from a traveller, built a fire, and made quite a meal. At night we returned to camp.

August 12.—Mounted our horses fully equipped today. It was laughable to see the horses running in all directions, riderless. Some men flying in the air; others came back holding their heads, etc. Recruits destined for the Infantry left us today. Decreased our encampment to 140 privates, 4 officers. Appointed Lance Corporal. Felt my importance.

August 25.—Tuesday arrived 40 wagons, each one drawn by 8 mules, and 30 wagons, each one drawn by 5 yoke of cattle. They were to accompany us across the plains. Today our long cavalcade was put in motion. 250 men, over 1000 animals, and 70 wagons makes quite a show. Theodore, mentioned before at Governor's Island, was leading 3 horses. He went flying past us all and bid us adieu. It was night before he could be overtaken. He was sent back, not being considered fit for a soldier.

Sept. 5.—Cholera has all disappeared from us. Arrived at Council Grove and Indian Mission. The last settlement this side of the plains. 6 houses only. The Mission was established for the Caw or Kansas Indians of whom a number came into our camp today. They are a half-civilized tribe of strong, athletic men but their heads are all shaven close with the exception of a ridge or tuft two inches in breadth, extending from forehead to neck and sticking up

like the comb of a cock. They were painted red but seemed friendly to us, begging us for whatever we could spare. When they had gone our laughter turned to rage for it was found they had stolen anything they could take.

Sept. 6.—Now we come upon the unbounded prairie. Before us no sign of timber or vegetation with the exception of a short dry grass from an inch to an inch and a half in length. Quite different from the past few days travelling the fertile well-watered section where the prairie grass sometimes, reaching above our heads as we rode through it, covered us from view.

Sept. 24.—For the past 14 days have been travelling up the river Arkansas. The scenery is dull and monotonous . . . a wide barren plain with not a sign of a tree or shrub or even a green spear of grass to be seen for mile after mile except near the river. Our horses' hoofs sink deeply into the dry mealy sand at every step. The prowling wolf drags himself quite near, looking distainfully at the column as it marches steadily on. It seems to say, "Yet a little longer and I'll have bones to pick. It matters not whether it be horse or rider." Today three soldiers were punished for some slight offense. A rope was placed around their ankles. The men were stripped first, however, then thrown headlong into the water. This is the prevailing punishment with this command.

Sept. 25.—Arrived Fort Atkinson, garrisoned by 1 company for the protection of travellers from the Indians. The company is in constant fear of an attack from a nearby camp of 1500 hostile Indians. This company has to send 35 miles for firewood and are obliged to send 12 to 15 men in company to get it. Passed in sight of the Indians and crossed the Arkansas River $1\frac{1}{2}$ miles in width, without bridge.

Sept. 27.—Last night after encamping, the soldiers were lying lazily upon their saddles, when a sound as of distant thunder was heard. Louder, more distinct it sounded. Every one sprang to their feet. An immense volume of dust was seen in the distance. A dark form emerged, retreated again. On they came. "To arms! The foe! Comanche Indians!" burst from every lip. Horses were saddled in

haste. All eyes anxiously watched the oncoming dust clouds. One who had never practiced prayer since he left his mother's side dropped upon his knees. Suddenly the dust lifted and revealed an immense herd of buffalo which came madly rushing through our camp upsetting 2 wagons and filling the air with the best government flour. Today had a grand buffalo hunt. Killed 4. It was the most exciting amusement I ever had. When one was wounded, he turned upon his pursuer with unbounded rage.

Sept. 28.—This day some Indians came into camp. One of them had some difficulty with an officer and left camp highly incensed, swearing vengeance upon us. We lay in camp, expecting trouble from the Indians but none came.

Oct. 1.—Last night they tried to stampede our horses but did not succeed. This morning not an Indian to be seen. I suppose they thought we would be after them. Moved on our road, travelled all day and night. No water on the road.

Oct. 4.—Laid over to rest and sleep yesterday. Today moved on. Met Col. May and several other officers returning from Mexico. Stopped one hour. The Colonel got pretty drunk; our officers also felt their brandy. They refused to obey the Commanding Officer, were put under arrest, threatened to shoot him but when the effects of the liquor were gone, their "bravado" went with it. Colonel Charles A. May won his rank for gallantry during the late Mexican War.

Oct. 6.—Buffalo growing more scarce. Came in sight of some spurs of the Rocky Mountains. Passed the spot where a few months since a mail party of 11 men were killed by Indians.⁸ Not one left to tell the tale. Their grave had been dug up by the wolves. Their bones were lying upon the surface.

Oct. 9.—Came to the first trees that we had seen for 10 days, diminutive but pleasant to behold. Later camped at some very deep clear springs, fine water. Quite a treat.

8. Ten men were killed in this unfortunate affair which occurred in the vicinity of Wagon Mound, a familiar landmark on the Santa Fe trail in northeastern New Mexico. See Lieut. A. E. Burnside's reports in James S. Calhoun, *Official Correspondence*, ed., Annie Heloise Abel (Washington, 1915), pp. 198f. This publication will hereafter be referred to as Calhoun, *Official Correspondence*. W. W. H. Davis, *El Gringo* (Santa Fe, The Rydal Press, 1938), p. 32, mentions the story.

Some more small trees. A small mountain is not so far away. Covered with timber. The mountains appear much nearer than any previous day.⁹ Met a mail party. Hear that the Indians are very hostile in New Mexico. Plenty of work for us. Today for the first time in my life, had to journey afoot. My horse was sick. Decidedly hard work.

Oct. 12.—Came to the first house we had seen since Fort Atkinson on the Arkansas River. A pile of mud brick built for protection against the Indians by a few settlers here. It is called "Barclay's Fort," the proprietor bearing that name.¹⁰

Oct. 13.—After nearly three months of weary traveling, there appeared in view a great pile of unbaked brick which was the village of Las Vegas,¹¹ a town with a central plaza or square. The houses were one story high, all built of adobe or mud brick which is dried in the sun after moulded in size about 12x24x4 inches thick. People, hogs, dogs, donkeys, goats and sheep, mingled together in one common mass, turned out to give us a reception. And right glad were we after our long journey to once more have the pleasure of listening to at least the grunt, bark, bay, and bleat if we could not understand the Mexican gibberish.

Upon closer inspection everything about the town was dirty and filthy. The roofs of the houses were flat and very often green with verdure. Dirty too were the men, women, children of all ages, sizes, and color; all ragged, squalid, poverty-stricken, undressed or half-dressed, bare-footed, and bare-headed. Some wore wooden shoes, buckskin breeches with bell buttons jingling, faded cloaks and capes,

9. The party apparently followed the Cimarron cutoff on the Santa Fe trail and were now in sight of the Sangre de Cristo mountains which lie north to south in north-central New Mexico.

10. Barclay's Fort was at the junction of the Cebollo and Sapello which unite to form the Moro river near the town of Watrous. Davis locates it sixteen miles from Las Vegas, *El Gringo*, p. 33. Joab Houghton testified in a land claims case April 3, 1857: "In 1849, Alexander Barclay acquired certain rights by deed from the original grantees, . . . one from Robert T. Brent, who held under William T. Smith, and one from James M. Giddings, one of the original grantees. Barclay proceeded to erect a fort on the Moro river and to cultivate ground. The fort is still standing, and occupied and known as Barclay's Fort." 36 cong., 1 sess., hse. rept. 321, p. 157 (1068).

11. Las Vegas was a comparatively new town in New Mexico; the first settlers located there in 1835 on Gallinas Creek, a branch of the Pecos river.

and broad brimmed hats with conical shaped crowns. Some were mounted upon ponies or mules and wore spurs heavy enough to act as anchors; others were on donkeys which they guided by the ears; still others were in carts with great wooden wheels covered with rawhide and drawn by oxen.

We are to remain encamped here until such time as we hear from Head Quarters at Santa Fe to know what is to be done with us.

Oct. 15.—Cleaned up after a long and arduous journey. Went into town to amuse myself. Found no one to talk with who understood English. The miserable dirty streets all look alike since only the church is higher than one story.

In the evening heard music going through the streets; looked and saw a man playing a violin, another a guitar, another the triangle, and all singing in Spanish. I tried to inquire the meaning of it and learned 'twas the notice of a "fandango" or dance. My curiosity led me to the "fandango." I found arrayed ladies of all shades from a snowy white to a jet black; all dressed in gaudy attire and decorated with jewelry, principally brass. The most of them having no waists to their dresses but a long shawl, termed "reboso,"¹² which was thrown over the head and shoulders. Some of them wearing very short skirts, exhibiting the smallest and best formed feet and ankles I had ever seen but they appeared pleased in showing them.

The music struck up; the floor filled; a quick lively air was played and "all went as merry as a marriage bell." This dance was a species of waltz. 'Twas finished; they sat down; those ladies who had waists to their dresses commenced taking them off. 'Twas too warm. They were not used to such binding measures. The women ranged in age from 10 to 80 years and their clothing varied from rich dresses, plain calico and long cotton shawls to even rags

12. "If a headdress was used, the *reboso* was worn around the shoulders . . . it was sometimes seven or eight feet long and nearly a yard wide, made of silk, linen, or cotton, and usually variegated and figured in the warp by symmetrically disposed threads waved in the dying. The finest rebosos were valued at fifty to two hundred dollars, but those of poorer quality seldom sold for more than five." Carl Coke Rister, *Southern Plainsmen* (Norman, University of Oklahoma Press, 1938), p. 208, (C. E. B.)

but all moved with grace and ease and kept perfect time with the music. The four musicians were seated at one end of the long room which had its benches on either side for the women. Two men played violins, another strummed the guitar, while the fourth made merry with metals or pieces of wood. The floor was the hard trampled earth as a board floor is unknown. The dance continued until after midnight when all appeared satisfied, dispersed, and went to their houses while I returned to camp to ponder.

Oct. 16.—Today busied myself in looking at Mexicans who came into camp to vend various articles which they supposed we needed. They entered camp riding upon jackasses which also were loaded with fruit or melons. No bridle or saddle was used. A short club guided the beast.

Oct. 22.—Express came today from Santa Fe. We are to be assigned to our respective companies at this place. 4 organized Companies of Dragoons arrived en route for their respective posts. Several officers arrived to receive recruits and horses for their posts. Drawn up in line. Told off to our Companies. I was to be sent to Company I, 1st Regimental Dragoons. Busied myself in making preparations for another move.

Oct. 25.—This morning started for Rayado¹³ to join Company I. Bid farewell to several acquaintances of ten month's standing and left with 31 others. Travelled 20 miles and encamped. No wood to be had. It rained and grew cold. Night came on. Nothing to eat, no way to cook if we had had food. Rest assured I went to bed hungry.

Oct. 27.—Arrived at Rayado. Felt as though I had got home. Got a good dinner for the first time in two months. I met today the celebrated Indian hunter and guide, Kit Carson,¹⁴ who resides at Rayado. This place derives its name from an Indian Chief who had isolated himself from his

13. Rayado creek flows eastward from the Sangre de Cristo mountains into the Cimarron. Carson located there in April, 1849, with Lucien B. Maxwell. See *Kit Carson's Own Story of His Life*, ed., Blanche E. Grant (Taos, New Mexico, 1926), p. 93.

14. The reader interested in Kit Carson and other individuals mentioned in these memoirs can find brief accounts in the *Dictionary of American Biography* (Charles Scribner's Sons, New York, 1930); *Appleton's Cyclopaedia of American Biography* (D. Appleton and Company, New York, 1888) (C. E. B.)

tribe and lived alone in a hut here until he died. There are but few people here and only about 10 houses besides the soldier's quarters. The place is situated on the edge of the great plains at the foot of the "eternal snow clad hills," a spur of the Rocky Mountains. A beautiful stream arises a few miles above the town in the mountains and winds its serpentine course downward until it is lost in the great, dry, wide plain below the village.

Oct. 31.—Since arrival there has been a great cleaning of arms, brushing of clothes, grooming of horses, burnishing of leather, etc. in preparation for being mustered into our Company. At 8 o'clock this morning appeared in full uniform to answer our names. Had an hour's drill. Received a long lecture from our Captain, William N. Grier,¹⁵ a fatherly old man who was designed for a Methodist minister but whose patriotic spirit exceeded his religious zeal. He took a gallant part in the Battle of Santa Cruz de Rosales during the Mexican War two years ago.

Nov. 1.—Now commences duty. Orders issued for drill and instructions for 2 hours daily. Mounted our horses. Went on to a circle or ring, riding at all gaits, without stirrups. Rather sore work but occasionally one is interrupted by the attraction of gravity.

Nov. 10.—Snow commenced falling. Order of exercises ceased on account of the weather. During this bad weather, I am studying Spanish.

Nov. 21.—Detailed to go in company with 20 men to meet the mail on the road from the United States, and to protect the mail party from Indians. Rather uncomfortable travelling as the snow is two feet deep on the plain.¹⁶ Met the mail. Their mules were dying from starvation and the men almost frozen to death. We took the mail along with

15. William Nicholson Grier was commissioned Bvt. 2nd Lieut., 1st Dragoons, July 1, 1835; Captain on August 23, 1846; and Bvt. Major, March 16, 1848. Mention of Major Grier's command at Rayado is found in Calhoun, *Official Correspondence*, p. 107, under date of June 6, 1850.

16. "Bronson, James A. Private . . . Remarks: Due U. S. for 1 Fur Cap 81c; 1 stock, 10½c; 1 Great Coat \$7.46½." Grier's Company I, *Mustering Roll Records*, October 31 to December 31, 1850, (C. E. B.)

us. Came to Barclay's Fort where they went on and we returned home.

Nov. 24.—Today is as usual, there being no church or religious service. We saddle our horses and chase wolves which abound here to a great extent. Sometimes see as many as 200 in a pack.

Nov. 29.—Yesterday a Mexican herder who had about 400 head of cattle near here came in and reported that the Indians had driven off all his cattle. We started in pursuit, post-haste. Kit Carson, our guide, says we will find them tomorrow morning. Travelled 70 miles.

Nov. 30.—9½ o'clock came on to the Indians. They were encamped. Among the cattle were a number of cows. The Indians had made baskets which had been made watertight with pitch. We found a great many hung up in the trees and full of milk, too. They were going into the dairy business pretty largely. We drove them from their camp. Recovered the cattle. Killed 7 Indians, took one child prisoner. Returned home.

Dec. 25.—A dull Christmas. Nothing was different from any other day.

Jan. 1, 1851.—Started for Santa Fe for mail in company with one other man. Used much care on the road. Saw nothing of Indians. Passed Las Vegas, a little town called Tecolota¹⁷ or Owl, and San Miguel¹⁸ which is noted for being the place where about 350 Texans were taken prisoner by the Mexicans in 1827. They were forced to march on foot to Mexico City and were treated most inhumanly. An account of this affair was published by William Kendall¹⁹ of New Orleans.

Jan. 3.—Arrived at Santa Fe. The great depot or emporium of New Mexico contains from 8,000 to 10,000 inhabitants. The houses are all built of mud brick, called

17. The correct spelling is Tecolote, a small village about ten miles southwest of Las Vegas on present day Highway 85.

18. San Miguel: another small village on the road to Santa Fe before present day Highway 85 was rerouted farther north.

19. The Texan invasion of New Mexico occurred in 1841, ostensibly for commercial purposes but with a political motive. The contemporary account can be found in George William Kendall, *Narrative of the Texan Santa Fe Expedition* (New York, 1844).

adobe, and only the churches, the Governor's Palace, and one hotel styled the "Exchange" are higher than one story.²⁰ The main plaza is the center of the city and is the great market place. Here are to be seen vendors of all kinds of marketable stuff. The sunny side of the streets is crowded with ragged men, women, and children, all asking in the most pitiful tones for alms. I was surprised to see so many objects of distress of both sexes with scarcely their nakedness covered. They are too lazy to work, and can not steal for people guard their property in this country and no temptations are presented no matter how much they may be inclined toward thievery.

I was also surprised to learn that the Pi Utah Indians, also known as Ant Eaters or Root Diggers, are brought here every spring and sold as slaves. The prices range from 100 to 400 dollars apiece. These Indians are found in the neighborhood of the Gila River. Their diet consists of roots, ants, lizards, snails, and snakes. They are very disgusting. They wear no clothing, build no shelter, and provide for no future wants. Their heads are white with the germs of crawling filth. The bodies of the dead are left unburied. They have no weapons of defense but a club and their fingernails. They are hunted in the spring when they are poor and weak and brought to Santa Fe for sale as slaves. Strangely enough the Gila River near which they live is supposed to have much gold in its bed.²¹

Jan. 4.—Visited the church.²² Did not find it as rich as I expected. From there went to the Governor's Palace, a long adobe²³ house. It was built by the Mexican Government²⁴ for the uses of state. It is now occupied by the

20. The Palace of the Governors may have looked higher than one story, but it was not so in its construction.

21. The Piute Indians are not known to have had their abode so far south as the Gila river, and it is doubtful that they were brought to Santa Fe in great numbers, although the capture and sale of Indians was practiced in New Mexico. This slave trade is discussed briefly in Andrew Love Neff, *History of Utah, 1847 to 1869*, ed., by L. H. Creer (The Deseret News Press, Salt Lake City, Utah, 1840), p. 370 f.

22. Probably the church of San Miguel, supposedly built about 1636.

23. See footnote 20.

24. The Palace of the Governors may have been built as early as 1610. An analysis of the floor plan can be found in Clinton P. Anderson, "The Adobe Palace," *N. M. H. R.*, XIX, 97-122 (April, 1944). For a description of its history and contents

Governor. Santa Fe was settled by the Spaniards about 1537,²⁵ a little less than 300 years ago.

In the evening attended a fandango. Never had seen the ladies of this place before but in 15 minutes I was acquainted with at least two-thirds of them and on as free and easy terms as if we were old school mates. A number of them talked good English. I noticed as a universal thing their neat and symmetrical form, far exceeding the generality of our women. This night's proceedings led me to form anything but a favorable opinion of the morals of this race of people. Treachery also seems to be the chief characteristics of this race of people. Stilettos are quickly drawn from their hiding places in moments of rage, and bathed in human gore.

Jan. 5.—A procession passed through the street this morning, carrying an image of the Virgin Mary. It was led by two violinists and one guitar player who played the same music as that at the fandango last night. As the procession neared the church there was an occasional firing of guns.

At night, attended another dance. Now I was an old acquaintance. I must dance. I did make an attempt but I must have made a ludicrous appearance as I never had danced before. This night the ladies indulged freely in wine, smoked a great many cigarritos, danced incessantly, and finally as midnight approached quarrels commenced. Half a dozen women became excited, had their passions aroused, fought, pulled each other's hair, scratched each other's faces, tore each other's dresses, and were borne off by their friends in a flood of tears because their wrongs were unavenged. They consoled themselves with thoughts of another fandango where they again might become gloriously drunk. Oh what a scene! Horrid to relate and sad to remember!

Jan. 8.—Returned home. Nothing on the road. Arrived

today see Works Projects Administration, *New Mexico*, (University of New Mexico Press, Albuquerque, 1945), 2nd edition, pp. 193-198 (American Guide Series). This is a useful reference book on New Mexico in general.

25. The more authentic date is 1610. For authoritative discussion see Lansing B. Bloom, "When was Santa Fe Founded," *N. M. H. R.*, IV, 188-194 (April, 1929).

in safety. Satisfied that I had got into a hard country. What a difference from my home life!

Jan. 16.—Started to escort the Paymaster, U. S. Army, across the Raton Mountains. Commenced snowing when we left home. Came to the foot of the mountains last night at dark and encamped. Woke this morning with the snow two feet deep over me. An ascent of 15 miles lay before us. The snow clad hills had a dismal aspect but on we trudged. The sun came out and we have been in water and snow knee deep. Half way up the mountain at dark.

Jan. 17.—Last night it froze. We started this morning but found that the mules couldn't pull one pound. We had to put ropes on and pull our heavy wagons up by hand. Delightful: Work hard all day in the snow; at night make your bed on a bank that would bury a man. It is too late to complain now.

Jan. 19.—Commenced the descent. Snow from 4 to 30 feet deep. Some places we are obliged to dig a road. At night killed some wild turkeys which appeared to hover about our fire. Reached the summit of the mountains after which the Paymaster left us on his way to the United States.

Jan. 21.—Yesterday proposed to take a new route home. Struck on to the plain. Snow falling in awful quantities. Nothing for our poor horses to eat. Started in the morning as usual. At 10 o'clock we knew not where we were. No sign of trees or timber. We were lost in a storm. Snow filled the air. The wind was cutting and very cold. Great complaints of cold came from all sides but on we went with death from cold an anticipation. Night approached. As yet no woods appeared. Extremities were benumbed. Hope was almost gone. The welcome voice of our guide was heard to exclaim, "Timber ahead. Come on!" New life, new action seized hold on us as we advanced to find it was but a phantom. Disappointment awaited us. Onward for two hours more and all hopes were dead. Another shout rang out, "We're saved!" In half an hour's time huge fires were blazing. At least 20 men were unable to dismount from their horses and had to be taken down by others. Most of

us felt rather the worse for wear but willing to stay in camp until the storm was over.

Jan. 23.—Arrived at home. Found it pleasant when night came to sit down to a good fire and sleep in dry blankets, even if it was on hard beds.

Feb. 3.—Went as escort with Dr. Magruder²⁶ to Taos, a town built as all Mexican towns are that I have seen. About 8,000 inhabitants live there while in the valley below also live nearly 1000 Pueblo Indians who all live under one roof in a house built in a circular form and being five stories high. Visited the burial ground. Found the grave of about 20 Americans who were killed at the time of the Mexican War.²⁷ Took a ride to the Rio Grande which is 12 miles from here and was about one mile in width and a muddy, turbulent stream where I saw it. In the evening attended another fandango. The prettiest women I have ever seen were present but the moral state was the same as elsewhere.

Feb. 8.—Heard music in the street. Looked out and beheld two fiddlers and one banjoist at a quick pace, playing a Spanish waltz. They were followed by 4 women who bore upon their shoulders the remains of a young girl which they were bearing to her last earthly resting place. What a solemn thing to behold! Returned home. 45 miles over the mountains.

March 10.—Paymaster arrived yesterday. Paid off the troops. Night came. The long rows of beds in our quarters were occupied. Benches were all full. All were interested in playing cards. Money exchanged hands as fast as possible. Up jumped one cursing himself, his parents, his God, for his evil fortune. Another that fiendish smile exhibited because he had won his fellows' money. All much engaged. Morning found many still gambling. Lost their sleep and

26. Dr. David L. Magruder, born in Maryland, was appointed Assistant Surgeon February 1, 1850, from Virginia. He was wounded in the Cieneguilla fight; see footnotes 100, 101.

27. In the fight at Taos on February 4, 1847, five dragoons were reported killed and nineteen wounded, one of whom later died; The Adjutant General, *Report*, December 3, 1849, 31 cong., 1 sess., hse. ex. doc. 24, p. 18 (576). Years later the results were tabulated at seven killed and forty-five wounded; Secretary of War, *Report* . . . , May 31, 1900, 56 cong., 1 sess., sen. doc. 442, pp. 3, 12 (3878).

their money. This is a practice followed very much by soldiers.

March 11.—Started with Paymaster for Fort Massachusetts.²⁸ Camped at Rio Colorado²⁹ (Red River) 40 miles from Taos. 3000 inhabitants live here and are the same as all others I have seen, indolent, dirty, and immoral. Passed a restful night.

March 13.—Arrived at Fort Massachusetts, 100 miles from home. Stationed here are 2 companies of Infantry and one company of Artillery. The fort is situated in a niche of the mountains. Snow is seen within a mile of them the whole year. They are constantly surrounded by wolves, bears, and Indians.

March 20.—Arrived home yesterday from Fort Massachusetts. Today an express came in for troops to go immediately on to the plains. Indians had committed murders of some kind. Left home in company with 80 men. Kit Carson is our guide.

March 21.—Came to Wagon Mound³⁰ 56 miles from home. A spring is here. The Indians had lain in ambush waiting opportunity. Mr. White,³¹ a Santa Fe trader, and his family came to this place in his carriage. The Indians pounced upon him. Killed him and five other men. Their bodies we found lying on the ground. We buried them and started in pursuit of the Indians. They, having taken Mrs. White, child, and female Negro servant with them, had left in haste. We are travelling hard, following Indian trail.

28. Fort Massachusetts was located in a sheltered valley on Utah Creek, about eighty-five miles north of Taos. A. B. Bender, "Frontier Defense in the Territory of New Mexico 1846-1853," *N. M. H. R.*, IX, 267 (July, 1934). Secretary of War, *Report*, December 4, 1852. 32 cong., 2 sess., hse. ex. doc. 1, pt. 2, p. 60 (674)

29. Rio Colorado (Red River) is a short stream flowing westward from the Sangre de Cristo mountains into the Rio Grande, north of Taos.

30. Wagon Mound is a geographical formation on the Santa Fe trail that gives rise to the name. There is a present day town of Wagon Mound, New Mexico.

31. Bennett is badly in error in his recollection of the date of this affair. Perhaps he confused the time and place with the mail party episode (see footnote 8). His story of the pursuit agrees reasonably well with the official report, but his description of Mrs. White's death is a new bit of information. Captain (and Brevet Major) William N. Grier led the pursuit party. See Grier to Acting Adjutant (1st Dragoons), Taos New Mexico, November 30, 1849, in War Department Files, National Archive, Adjutant Generals Office, 1850, No. M98, (C. E. B.). For other sources of information see Calhoun, *Official Correspondence*, pp. 63-88. Davis, *El Gringo*, p. 29ff.

March 30.—Hard travelling but we are gaining on the foe. Trail is growing more fresh. Should judge that there were 200 Indians ahead of us. Nearly every day we find some piece of Mrs. White's dress or some thing of her child's clothing on the road. I suppose left to encourage us to hurry on.

April 5.—Today passed two of the Indians' encampments. They go more slowly, perhaps they think we are not following them. We are not allowed to build fires at night for fear we might be noticed.

April 8.—May find our enemies tomorrow. Trail very fresh. We now are in the State of Texas, travelling down the Red River³² towards the mouth of the Mississippi River. Still on we go, expecting momentarily to see our game. Now we are in a fine country. It is a beautiful valley, very productive, that has a fine, deep, wide stream running through it.

April 10.—This morning as we came upon the brow of a little hill, Kit Carson darted back and informed us that the Indians were on the other side of the hill. As was usual upon such occasions, all were engaged for a moment in making preparations. Arms were examined; saddles made tight; and one sober thought, perhaps a short but silent prayer was given; then came the command, "Charge!"

On we went at a furious rate. As we came in view of the Indians, they were so taken by surprise that they fled in dismay. Their shrill shrieks were echoed by the exultant yells of the soldiers who fired a volley after the fleeing foe. Indian horses were stampeded, dogs barked, and mothers left their children regardless of danger or destruction to jump into the river in efforts to gain safety.

As we neared their camp, I saw Mrs. White trying to disengage herself from an old squaw who was trying to put her on an old mule to take her away. Mrs. White, knowing we were troops, tried to reach us. She succeeded in getting away from the squaw but the Indian woman very deliber-

32. The party was still within the present day boundary of New Mexico. They struck the Indians on a southern branch of the Canadian (Red River) south of the present town of Tucumcari, New Mexico.

ately drew her bow and arrow, aimed, and Mrs. White with a shriek fell, pierced to the heart when we were within 15 paces of her. For which act the squaw paid dearly with her own life. Of the Negro girl or the child we found no trace. The Indians were all gone. We searched the scene of action, found 8 bodies lying dead on the ground and at least 3 more were shot in the water after they had sought refuge in the river.

We encamped and buried the remains of Mrs. White. She was a fraile, delicate, and very beautiful woman but having undergone such usage and treatment as she had suffered, nothing but a wreck remained. Her body bore evident signs of brutal treatment. It was literally covered with marks of blows and scratches. Her feet were all torn and cut from travelling. Her countenance even after death indicated a sorrow-stricken, heart-broken, and hopeless creature. Over her corpse we swore vengeance upon her persecutors.

After dark a noise was heard near our camp. At first we supposed it to be an animal of some kind. 3 or 4 of us made an examination through the willow bushes and found an Indian child which I suppose was about 8 months old. It was strapped to a board as all Indian babies are. I found it. An old gruff soldier stepped up and said, "Let me see that brat." I handed it to him. He picked up a heavy stone, tied it to the board, dashed baby and all into the water, and in a moment no trace of it was left. The soldier's only comment was, "You're a little fellar now but will make a big Injun bye and bye. I only wish I had more to treat the same way."

April 11.—Turned for home. Took with us 150 horses and mules taken from the Indians. Burned all their camp equipage before leaving.

May 9.—Returned home again yesterday, tired and wornout. Today orders came to move as soon as practicable.

May 11.—Spent the past two days in preparations to move bag and baggage. Today marched away from our winter quarters. Camped on the Ocate.³³ Found an old

³³. Ocate creek rises in the eastern foothills of the Sangre de Cristo range and flows into the Canadian river.

Indian woman secreted in the rocks. She informed us that she was an "Appacha;" [Apache?] that it was her tribe that had held Mrs. White captive; that the Negro girl was killed because she could not keep up; that the "Uths" [Ute or Utah Indian?] had the child. We took her prisoner.

May 15.—Came to Las Pozos or Holes in the Ground. These are holes filled with water. No bottom can be found. Here are encamped 3 companies of soldiers. Quite a display of canvas in the shape of tents. A severe thunder storm arose. Lightning struck one tent, killing one man and shocking two others. Visibly felt by all in camp. Commenced building a fort.³⁴ I was appointed Corporal and of course was exempted from manual labor by my promotion.

May 29.—Sent in charge of 15 men on detached service to protect the "Villa" of Rayado from a band of Indians staying near there. Kit Carson's place is nearby. We left yesterday and arrived this morning at Rayado where we found 60 or 70 Indians quite saucy. They were helping themselves to whatever they chose. I told their Chief that I had come to stop them. He rather scoffed at me, and spit at me as much as to say, "I think as much of a dog." I ordered my men to have ready their arms. I then ordered the Indians to leave town. They refused. In the meantime I had our horses all saddled. We stepped out to the stable, mounted our horses with the intention to shoot down all before us or be shot ourselves. The Indians saw our movement and left without delay. I, being in command of the party, did not consider it politic to follow them.

June 2.—Indians have all left this vicinity. Started for the new fort, now called Fort Union, and again joined my company. Received approval from the officers for the course I took with the Indians.

34. This was Fort Union, erected in the summer of 1851 by Colonel Edwin V. Sumner. It was located about ten miles northwest of the point where Cebolla creek and Sapello creek united to form the Mora river. For an early description see Assistant Surgeon J. Letterman, *Sanitary Report*, October, 1856, 36 cong. 1 sess., sen. ex. doc. 52, pp. 221f (1035). Davis, *El Gringo*, p. 33. Miscellaneous information on forts in New Mexico can be found in A. B. Bender, "Government Explorations in the Territory of New Mexico, 1846-1859," *N. M. H. R.*, IX, 1-32 (January, 1934); and Bender, "Frontier Defense . . ." pp. 345-373.

June 14.—Tuesday started with 18 wagons, 31 men for Fort Defiance³⁵ with supplies for the troops there. Arrived at Santa Fe today. Visited the Exchange, a hotel. In the evening several persons were seated in the hotel. A person came in, took a glass of brandy, turned from the bar and commenced firing his pistol at random, and could not be stopped until he had fired four shots which wounded one lawyer in the abdomen and another man in the arm. He was asked the reason for so doing and replied, "A friend of his from Texas was killed at Santa Fe and that all the inhabitants of the place were cut-throats, robbers, and murderers." He was a Texan. He was placed in jail. Later in the night, the Texan was taken from the jail and hung by the neck in the back yard of the Exchange. I suppose it was done by friends of the lawyer.

June 18.—Left Santa Fe. In sight of Delgrado Rancho is quite a rich gold mine which I may visit at some future time but can not today. Passed Las Algodones and Bernalillo,³⁶ the latter the prettiest place I have seen yet. The door yards are all hedged and a good store of shrubbery around their houses. Arrived at Albuquerque. This place is nearly as large as Santa Fe and is a very lively place. At night four fandangos, furnished the same easy kind of acquaintance as elsewhere.

June 19.—Crossed the Rio Grande which is 1 mile in width and has deep quicksand here. I once or twice imagined that a portion of our wagon train was lost as we do not have the advantages of bridges here.

June 23.—Laguna,³⁷ an old Indian town built upon a hill over a lake. It is very much dilapidated. Occupied by

35. Bennett is again wrong on chronology. The site for Fort Defiance was selected by Col. Sumner, September 18, 1851. Frank D. Reeve, "The Government and the Navaho," *N. M. H. R.*, IV, 96 (January, 1939). It was located at the mouth of Canyon Bonito on the west side of Fort Defiance Arroyo, or present day Black Creek, near the northwestern Arizona-New Mexico boundary line. Davis, *El Gringo*, p. 231, describes the fort.

36. Bernalillo is seventeen miles north of Albuquerque on present day Highway 85 and the village of Algodones is six miles farther.

37. Laguna lies about fifty miles west of Albuquerque on Highway 66. The Pueblo was established in 1699. Davis, *El Gringo*, p. 223f. Useful references books on pueblos are A. F. Bandelier and E. L. Hewett, *Indians of the Rio Grande Valley* (University of New Mexico Press, 1937); Charles F. Lummis, *Mesa, Canon and Pueblo* (New York, The Century Company, 1925).

some 850 Pueblo Indians of the old Aztec race. Every morning that they rise, they look to the east expecting Montezuma, the Aztec Emperor of ancient Mexico, to appear with the rising sun. They are good, peaceable citizens. They cultivate their ground and are more friendly and decidedly more honest than the Mexicans.

June 27.—We have had a very hot and dry route over sand hills. We have lost 34 head of cattle which died from this cause. Arrived last night at Zuni,³⁸ another Indian town. This morning the Indians gathered around us. I was surprised to see some 8 or 10 that appeared to belong to one family. These seemed to be Albinos with white hair and pink eyes. Learned on inquiring there were several such families here. I thought it a very strange thing among Indians.

June 29.—Reached Fort Defiance to find the troops out of provisions. They had been subsisting for two weeks on one pint of corn per diem together with what berries or fruit they could gather. They were glad enough to see us. This is a beautiful country but like other places it is infested with savage Indians.

July 15.—After 14 days travel, once more reached Fort Union, New Mexico. Glad to rejoin my company³⁹ which is now my home.

August 5.—Last Sunday started for Albuquerque to join Col. Edwin V. Sumner⁴⁰ on an expedition against the Navajo Indians, numbering about 8000 warriors who also practice agriculture and the raising of flocks and herds. The Colonel won his rank for his conduct at Molino del Rey during the Mexican War.

Camped at Rio Pecos, an old abandoned Indian town.⁴¹

38. The Pueblo of Zufi lies west of Albuquerque close to the Arizona-New Mexico Boundary.

39. Company I, 1st Regiment Dragoons, (C. E. B.)

40. Col. Edwin V. Sumner was promoted to Brvt. Lieut. Col., April 18, 1847, for gallantry and meritorious conduct at the battle of Cerro Gordo, and Colonel on September 8, 1847, for similar conduct at Molino del Rey.

He assumed command of the department of New Mexico, July 19, 1851, and campaigned against the Navaho in August. Reeve, "The Government and the Navaho . . . , p. 96.

41. The Pecos Pueblo was abandoned in 1838 when the seventeen surviving inhabitants migrated to Jemez Pueblo northwest of Bernalillo in Jemez Canyon.

Here are the ruins of quite a large town. Still there are subterraneous rooms and cells. Two old churches with singular carving upon their woodwork show the marks of fire. Old graves and an old altar under the church may be seen. I asked some Mexicans that I met here if they knew anything about the history of the town. They informed me that the old Indians have a legend that "A long time ago, it was a prosperous place but that a serpent with seven heads came among them. To appease the serpent they were obliged to give it a maiden from their tribe every few days. After a time their number grew so small, they left town for fear of total degeneration, and took with them the eternal fire of Montezuma which they ever watch with care that it be not extinguished." It is true that they have this fire burning and that it has been for ages. They suppose when this fire is suffered to go out, their race will become extinct. Some calamity will befall them at once.

August 10.—Our long line moved from Albuquerque. It consists of 200 mounted men, 150 footmen, besides 60 teamsters, packers, etc. It makes a grand total of over 400 men, 40 wagons, a large number of loose horses, mules, and cattle. Travelled 60 miles without water. At night, about 9 or 10 o'clock, came to a little water hole which was green and muddy. I jumped from my horse and succeeded in getting a cupful but when I went to drink it, came near swallowing a tadpole and was forced to close my teeth in order to strain the water. When I had finished, I emptied out mud and polywogs. I was surprised myself that I could drink it but you that don't know what thirst is, try it!

August 19.—Passed Cubero⁴² which is a miserable little town of some 500 people who look like Indians. Their little huts are built on a pile of rocks. Offered them gold in exchange payment for corn but they didn't know its value.

A. F. Bandelier, "Report on the Ruins of the Pueblo of Pecos," *Papers of the Archaeological Institute of America* (Boston, A. Williams and Co., 1881), part II, pp. 124ff, (C. E. B.). For a list of studies on Pecos Pueblo see Lyle Saunders, *A Guide to Materials Bearing on Cultural Relations in New Mexico* (University of New Mexico Press, 1944).

42. Cubero lies about fifty miles west of Albuquerque on Highway 66. (See footnote 137).

Also passed "Hay Camp"⁴³ which is so called from a circumstance which happened two months ago . . . 16 men, Americans, were at work here cutting hay for the government. The Navajo Indians came upon them, killing 7 of them and throwing their bodies in the crevices of the rocks. I found the bones of four of them. We could see them but could not reach them. Reached Moquis,⁴⁴ another Indian town. It is somewhat like Zuni, isolated from all the rest of the world.

August 23.—The day before yesterday we left our wagons, packed mules, and took to the mountains. Saw Indians, 12 or 15, riding within a mile of us as unconcerned as you please. If we tried to approach them, they would flee to the mountains. When we turned back, they would follow us.

Aug. 27.—The Indians still keep with us by day. At night we can occasionally see their fires. A little after dark last night, the enemy fired several shots into our camp. Wounded one man in the leg. Wounded man is carried on a litter. One officer we have, a Major George Blake, every night has a grave dug in his tent to protect him from night attacks by the Indians. Now at the mouth of the Cañon de Shea [Canyon de Chelly].⁴⁵

Aug. 29.—Entered Canon for 15 miles yesterday. Both sides of the ravine are perpendicular and increasing in height as we go farther in. At this point, the walls are from 200 to 300 feet in height. The Indians are on top and we are on the bottom and we can not get at them.

This morning, we got a salute from the red skins but the only injury was to wound a horse so badly that we had

43. The Hay Camp was about thirty miles west of Laguna Pueblo on the banks of Gallo creek. Davis, *El Gringo*, p. 226. The killings mentioned having occurred there are recorded in Calhoun, *Official Correspondence*, p. 451.

44. Sumner does not mention visiting the Moqui, or Hopi Pueblo, which lies far west of Zuffi. Bennett may have had Acoma Pueblo in mind when he wrote Moqui. *Ibid.*, 416-429. Reeve, *op. cit.*

45. For a description of Sumner's penetration of Canyon de Chelly see Calhoun, *Official Correspondence*, pp. 416-419. A description of this Canyon and the later complete penetration of it by Kit Carson's forces and the Navaho war of 1863-1864 is told in Edwin L. Sabin, *Kit Carson Days 1809-1868* (New York, 1935) vol. II, revised edition.

George Alexander Hamilton Blake was promoted to Major, 1st Dragoons, July 25, 1850, and served as such to May 13, 1861.

to kill him. After travelling about two miles we came to a fine corn field and a nice watermelon patch where we feasted sumptuously, with only an occasional ball passing by. We destroyed the corn field and the melon patch. A little farther forward we found a large and flourishing peach orchard. Here we regaled ourselves and filled our pockets and sacks but the lead balls began to fall thickly and we had no way to retaliate. Prospects look bad ahead with no visible outlet. We concluded as we found a shelter of rocks to remain there for the day.

Night came. Over our heads and around us were to be seen at least 1000 little fires. The dark forms of the savages were seen moving about them. A council of our officers was called. All concluded 'twas best for us to retrace our steps as no one knew the country and the Indians by far outnumbered us. Saddled our horses about 10 o'clock and started back through the darkness.

August 31.—Yesterday morning encamped at the mouth of the Cañon, Indians here as usual all about it. One Indian came into camp just at dusk, tried to steal a horse. He was killed and very much mutilated by the soldiers. Animals all starved out, dying by the dozens daily. Turned for home.

Sept. 20.—Arrived at Fort Defiance, Monday. We were minus over 200 animals which died from hardships and starvation. The past few days have been spent in recruiting (resting) our animals. Started on foot, leading our horses toward home. Met our wagons which we had left. Some hope now if we get sick, we can ride in a wagon.

Oct. 8.—At Laguna found the Navajos had been there ahead of us and had stolen quite a large herd of cattle. At Albuquerque, attended a fandango. That night we forgot all the troubles we had passed through and so we danced until morning. Once more at Fort Union which we found nearly built. It presents quite a town-like appearance.

Nov. 4.—Company picked up their property once more and left for Galisteo⁴⁶ in company with Company F, 1st Dragoons, Major Blake commanding. Arrived at Galisteo

46. Galisteo lies south of Santa Fe. It was a good forage country for stock.

(600 inhabitants) which has very comfortable quarters. It is 25 miles from Santa Fe and 10 miles east of the *Placer* gold mines.⁴⁷

Nov. 12.—Left for Navajo country to make treaty with them. Went to Pena Blanca,⁴⁸ a small but pretty town where we spent last night. Crossed the Rio Grande and took wrong road. Got lost in the mountains. Returned 11 o'clock at night where we started in the morning. 16 hours in the saddle.

Nov. 14.—Yesterday took a new start. Got right road. This is very mountainous country, abounding with deer and bear. At night, arrived at Jemez,⁴⁹ an Indian town on the Jemez River.

Nov. 15.—This morning the old chief harangued his people from a sort of rostrum but it was all Greek to me. At 2 o'clock the Navajos came in about 2500 strong. A treaty⁵⁰ was formed and signed by the chiefs of the various tribes and our part by Col. Sumner. We then set out for our quarters at Galisteo again.

Dec. 28.—Left with Company for Pena Blanca yesterday on account of there being no forage for our horses at Galisteo. This is a poor place. 70 men are all huddled up in two small rooms. We can scarce turn around without bumping someone.

Jan. 1, 1852.—The neighbor's chickens and pigs have to suffer. I went into the kitchen and found four nice pigs and 32 fat chickens ready for the pot and oven for a New Year's dinner. It is easy to judge how they came there when none have been bought. "The partaker is as bad as the thief" but they smelt too good not to eat. Rest assured, I didn't leave the table hungry.

Jan. 20.—Time has gone on finely. Nothing to do.

47. The Old Placers were opened in 1828 and the New Placers in 1839; considerable quantities of gold were found over a period of years. See Bancroft, *Arizona and New Mexico* (San Francisco, 1889), p. 340; and Josiah Gregg, *Commerce of the Prairies* (The Southwest Press, Dallas, Texas, 1933) reprint, p. 107f.

48. Peña Blanca is a village on the east bank of the Rio Grande southeast of Santa Fe.

49. Jemez Pueblo in Jemez Canyon dates from the late seventeenth century.

50. Calhoun met the Navaho at Jemez on December 25, 1851. Reeve, "The Government and the Navaho . . .," p. 99.

Rather cold though and wood has to be brought 25 miles. Went to Santo Domingo,⁵¹ 5 miles from here to a feast of the Pueblo Indians. They dressed in the most fantastical style and such dancing is indescribable. I was highly "edified."

Feb. 6.—Started in company with 60 men on an expedition against Apaches of Mangus Colorado's⁵² band. (Red Sleeve's band). Stayed at Las Algodones last night. At Albuquerque, in an affray, one soldier was shot dead. Both soldiers belonged to another company.

Feb. 10.—Socorro⁵³ yesterday. Saw here the former Mexican Governor of New Mexico, named General Armijo.⁵⁴ Arrived at Valverde (Green Vale), a very pretty valley from 2 to 3 miles in width and covered with cotton wood trees. Fort Conrad⁵⁵ is located here. Here are concentrated 250 men to accompany us.

Feb. 12.—Marched. All on foot leading our horses. Our cavalcade consists of 300 men, about 350 horses and mules. Travelling down the Rio Grande. Camped on its bank.

Feb. 16.—Sandy roads, no grass, and warm weather cause great complaints over marching. This morning left the Rio Grande. Course due west. Now we have no roads. Camped on a small stream in a deep ravine. The water was very warm. It issues from a hot spring 1½ miles above us.

51. Santo Domingo Pueblo lies southwest of Santa Fe at the confluence of Galisteo creek and the Rio Grande.

52. Mangas Coloradas was chief of the Mimbrenño Apache in southwestern New Mexico. Those Indians were a source of trouble for many years and much has been written about them. The orders for this command are in Calhoun, *Official Correspondence*, p. 478f. See R. H. Ogle, "Federal Control of the Western Apache 1848-1886," *N. M. H. R.*, XIV, 309-365 (October, 1939): also published in *Historical Society of New Mexico, Publications in History*, vol. IX. Bartlett, *Personal Narrative of Explorations and Incidents* (D. Appleton and Company, New York, 1856), vol. I, chps. XIII, XIV.

53. Socorro is an early Spanish-American settlement about seventy-five miles by highway south of Albuquerque.

54. Manuel Armijo was the last governor of New Mexico under the rule of Mexico and fled southward on the arrival of the Army of the West under General Kearny. For a characterization see Davis, *El Gringo*, p. 202.

55. Fort Conrad was established at the north end of the famous *Jornada del Muerto* by Sumner in 1851. It was moved in 1853 a few miles to the south and named Fort Craig. Bender, "Frontier Defense . . .," 249-272. Calhoun, *Official Correspondence*, p. 433.

We have 1 Indian, and 1 Mexican as guides with Major Marshall S. Howe⁵⁶ in command.

Feb. 18.—Came to the head of a deep ravine and commenced the descent about 11 o'clock in the morning. We were in a very narrow passage surrounded by high, abrupt mountains. The Indian guide was in advance. Shots were heard. We immediately hurried forward and found our guide shot through the left hip. The ball had lodged in his saddle. At the same instant we heard shouts of Indians. On getting into a clear spot, 15 Indians were visible but in such a position that we could not get at them. It was the wish of the soldiers to get around them and if possible kill them but the Officer in Command, Major Howe, *having the bump of caution* well developed, objected on the ground that the large body of Indians were on the other side of the hill. We moved on, came to a fine valley and stream called Rio Mimbres. This is a deep but clear stream. The stones on the bottom are visible. These stones have a dark blue color from the appearance of so much copper. The valley was filled with fine black walnut trees which only grow in very rich, fertile soil. We camped. The officers placed their tents in the center. We were all placed at short intervals around the camp to watch. We were all, every man, to be on post during the night. Only think of it! 300 men to watch and guard 5 officers! Oh, that our government only knew the courage of some of her officers! Nothing happened during the night.

Feb. 20.—Arrived at the Copper Mines⁵⁷ where Fort Webster⁵⁸ is located. Not long since the Indians came in sight of this fort and killed one Sergeant and 4 privates, and wounded 3 others. There are 50 men here, all frightened out of their wits. They have old wagons, logs, barrels, rocks, and other articles too numerous to mention, piled around

56. Marshall Saxe Howe entered the army as 1st Lieut., 2nd Dragoons, June 11, 1836. He attained the rank of Major, July 13, 1848.

57. The Santa Rita copper mine was probably worked as early as 1804. Bartlett, *Personal Narrative . . .*, I, 227. Stuart A. Northrop, *Minerals of New Mexico* (University of New Mexico Press, 1942), p. 19. Bancroft, *Arizona and New Mexico*, p. 303.

58. Fort Webster was established in 1851 about eight miles east-northeast of the Santa Rita copper mine to check the Apache. Bender, "Frontier Defense . . .," 267. Calhoun, *Official Correspondence*, p. 433.

their fort, making it almost impossible to get to it. Their cannon is placed on top of the roof which is flat like all the roofs in this country. They expect momentarily to be attacked by the Indians. When they first saw us coming over the mountain, the mouth of their cannon was turned upon us but their fear was turned to joy when they recognized us as soldiers. During the night it turned cold and snowed 3 or 4 inches. Pleasant to be in camp.

Feb. 22.—Yesterday the snow melted. We moved on. Passed an old excavation where gold was formerly mined. It is now deserted on account of the Indians. Animals are dying fast. Thousands of Maguey or century plants are to be seen here. It grows luxuriantly in the richest soils and also shows itself in desert places where nothing else except a few stunted spears of grass can exist. Its uses are many. The fiber of the leaf makes a thread and is woven into sack-ing or made into ropes. Liquor is made from it. The rooty part of the stem is used by the Mexicans in washing. The plants grow about 18 feet high and have flowers on the top. Here grow also all species of Cactus.

Feb. 23.—*Today found fresh signs of Indians. Our officer concluded to go the other way!* [The word "officer" was not underlined in the text. C.E.B.]

Feb. 16.—Came to Rio Gila.⁵⁹ The vicinity along this beautiful river is said to be rich with gold. 'Tis a large river which empties into the Colorado, the latter running into the Gulf of California. We rested and fished. Caught a peculiar fish said to exist in no other river. Good eating, too. Today we moved down the river. Found an impediment in the shape of a mountain. Encamped to make a reconnoiter.

Feb. 27.—Advanced. The front of the column reached the summit of the mountain. Our officer took out his glass and took observations of the extensive valley. Below us was to be seen cattle grazing, and smoke curling up in one or two places. 'Twas evident Indians were there. After a moment's consideration he turned and gave the command, "Count-

59. The Gila river rises in the Black Range in southwestern New Mexico and flows southwest and west into the Colorado river. For early difficulty in traveling along the Gila see William Elsey Connelley, *Doniphan's Expedition*, (Topeka, Kansas, 1907), ch. XII.

ermarch!" Oh! What feelings arose within the breast of each soldier that had a spark of courage in him! To endure a long journey, get in sight of the Indians, have a spirited action in anticipation, and then our cowardly old Major from mere personal fear orders a "Countermarch!" The shouts of the men should have caused his cheek to have flushed with shame. We turned about, disgusted and disappointed. Shame on him who boasts of being an American and an officer in the army and is guilty of such cowardice. *March 3.*—Southerly course. No trail. Shoes worn out. An ox was killed. Made shoes of rawhide which were rather uncomfortable when the sun dried the leather. At Las Casas Grandes⁶⁰ are old ruins of some large buildings which I am inclined to think were built by the Jesuits. One building covered an area of 4 acres. Walls upon one side still standing 80 feet in height. An old altar with exquisite carving interested me. Pieces of pottery I found marked "1734." Buildings were all of small stones put together with a kind of cement. I could not examine as much as I would have liked.

March 18.—Easterly course. Left the Rio Gila some days ago. Passed Copper mines. No shoes or boots to be had. Again on the Rio Grande and glad to see it. Today the grass was as high as our heads and accidentally it got on fire.

60. Colonel E. V. Sumner ordered Major M. S. Howe, about February 3, 1852, to move against the Apache and to remain in the field for a month, but there is no further information in the National Archive about the expedition. E. G. Campbell (National Archive) to Reeve, October 30, 1946. The expedition could have reached Casa Grande, Arizona, or Casas Grandes south of Janos in Chihuahua, Mexico, which is described as built of adobe (caliche) with coarse gravel. Bartlett, *Personal Narrative* . . . , II, 352. Casa Grande, Arizona, is located about midway between Tucson and Phoenix and is now a National Monument. The walls were constructed of puddled clay (caliche) and stones were only incidental. For history and description see Frank Pinkley, *The Casa Grande National Monument in Arizona*, (1931). J. Walter Fewkes, *Excavations at Casa Grande, Arizona in 1906-07*, (Smithsonian Miscellaneous Collections, Quarterly Issue, 1907), vol. 50.

Bennett's statement that they followed a southerly course, his use of the name Casas Grandes, and the statement about coarse gravel in the adobe, lead to the conclusion that the expedition crossed the border into Mexico. This was a logical move in pursuit of Apaches who were unusually troublesome in those years, but rather surprising without permission from the government of Mexico. When Major Howe turned away from the Apache, much to Bennett's disgust, the Indians may have been on the Mexican side of the Gila boundary line; if so, venturing as far south as Casas Grandes may have been done in ignorance of the boundary line in that direction.

Came rushing on at a tremendous rate. We had merely time to save ourselves by running to the sandy beach of the river. All our provisions, saddles, arms, ammunition, and camp equipage were destroyed. It was an exciting time. 300 guns and several pistols, lying promiscuously on the ground, discharged their deadly contents in all directions. No accidents, however, happened. Bad as an Indian fight. The Major didn't seem to enjoy it.

March 25.—Arrived on the 19th once more at Valverde. We were without arms, clothes, ammunition, or provisions when we entered Fort Conrad. Drew a new supply from the Quarter Master. Now staying in camp, getting rested from our tiresome expedition. Nothing to do.

April 6.—Up Rio Grande to La Joya⁶¹ where we went into quarters. This is a small town with only 500 inhabitants. Now is Lent Time. Some Mexicans are doing penance⁶² for past offenses (Lord knows the need so to do). 13 persons went through the street whipping themselves with a kind of sharp pointed plant called Spanish Bayonet, (similar to that or a sickle), until the blood was trickling down their backs. Others were dragging a heavy cross of wood through the streets with their feet loaded down with chains. One other I noticed buried, standing upright, in the ground with nothing above the surface but his head. He remained in that position two days and nights, This is punishment put upon them by the priests for past offenses which have been confessed by them.

April 20.—Appointed Commissary Sergeant.

May 1.—Left La Joya with No Regrets! It is a poor lonesome place. Encamped at Peralta⁶³ where a Dr. Con-

61. La Joya is on the east bank of the Rio Grande about twenty miles north of Socorro.

62. Bennett is describing the Easter rites of Los Hermanos de Penitentes, a religious order still active in New Mexico. For description see Earle R. Forrest, *Missions and Pueblos of the Old Southwest*, (Cleveland, Arthur H. Clark Co., 1929), pp. 196-200, (C. E. B.). The most thorough study of this society is Dorothy Woodward, *The Penitentes of New Mexico* (Yale University thesis in history, 1935), ms.

63. Peralta is on the east side of the Rio Grande about twenty miles south of Albuquerque.

nelly⁶⁴ lives. He is an Irishman who came to this country a few years ago without a cent. He married a rich widow and is now worth at least \$300,000.

May 3.—At Albuquerque found encamped 6 companies of soldiers which number about 400 men concentrated for the purpose of receiving military instructions. Arranged our camp $\frac{1}{2}$ mile out of town and all in a body. Orders are very strict: not allowed to leave camp, night or day, without permission; drill 3 hours every day; dress parade every morning in full uniform; inspection every Sunday morning; and must give a grand display to the best of our abilities.

May 18.—The soldiers will be out of camps nights in spite of orders or officers. Four fandangos every night in town and the camp is full of women! Last night two soldiers deserted. They took their horses and left. News came that the Indian woman we took prisoner on the Ocate River on May 11, last year, had killed the sentinel with a butcher knife and escaped.

May 26.—One of the men who deserted was brought back, placed in the guard house as a prisoner. Man was tried, pleaded guilty. He was sentenced to be drummed out of the service; forfeit all pay and allowances that are or may become due; have head shaved; and be branded on the left hip with the letter D, $1\frac{1}{2}$ inches in length. Above sentence carried into effect. What a sorry looking object a man is with his head shaven. Hard punishment also to receive 50 lashes on the bare back. These were well laid on with a rawhide whip.

June 8.—Almost eaten up by mosquitoes. The sun pours down and the thin tents are no protection against it.

June 18.—Started for the purpose of making a treaty with the Gila Apaches. Travelled 45 miles yesterday. Hot summer day and no water. Today passed Laguna. Camped at a spring beneath a ledge of rocks in a small cave. Better water I never drank. The sun never shone upon it.

June 20.—Reached Achama⁶⁵ where the treaty is to be

64. Dr. Henry Connelly was a long-time resident and merchant of Chihuahua, Mexico, and Santa Fe, New Mexico. He also had a house at Peralta. Twitchell, *Leading Facts* . . . , II, 391 note 316. Davis, *El Gringo*, p. 197.

65. Acoma (not Achama) is about fifty miles airline southwest of Albuquerque.

made. An Indian town upon a high table land is accessible only upon one side and only for one horseman at a time. About 450 civilized Indians live here. Mangus Colorado (Red Sleeve) came in. Walked into Col. Sumner's tent, made himself very much at home. He said to the Colonel, "You are chief of the white men. I am chief of the red men. Now let us have a talk and treat." The treaty⁶⁶ was concluded satisfactorily. Returned home.

July 4.—No sign of Independence here at our Albuquerque camp. Arrived 250 recruits from the United States. Little do they know what this life is here.

July 13.—Arrived at Santa Fe where we were paid off. Numerous dances in town. Soldiers all attended. 11 o'clock at night firing of fire arms was heard. Went to where they were, found the soldiers fighting with the Mexicans who at last gave way after a severe scuffle. The soldiers were still in a body talking when an officer approached and inquired the cause. Being informed he marched on, met a large party of Mexicans, hailed them, ordered them to stand. They refused and fired one shot without effect. The officer immediately ordered his guard, 12 men, to fire. The party of Mexicans scattered. No more trouble followed.

July 14.—7 Mexicans are reported dead. One of our men missing last night, was found nearly dead in a back street. Taken to hospital, the sick ward in the camp. We marched on. Arrived at Canada⁶⁷ which is pronounced in Spanish as "Can y a tha." Went on to an Island in the Rio Grande. Fixed camp. Remain and await orders from Santa Fe. Good shade here and nothing to do suits us fine.

August 4.—Orders came to move to Taos. Started. Camped at San Juan⁶⁸ on the Rio Grande. The town is very well scattered, covering 5 or 6 miles of the valley which is a fine agricultural section.

66. Bennett is wrong on the date. Col. Sumner and Indian Agent John Greiner planned to meet the Indians at Acoma on July 11, 1852. Calhoun, *Official Correspondence*, pp. 541ff. Ogle states they met on July 21, *Federal Control of the Western Apaches*, p. 343. (See footnote 52).

67. He probably means Santa Cruz de la Cañada, an early Spanish settlement about twenty-five miles north of Santa Fe.

68. San Juan Pueblo, a short distance north of La Cañada.

August 7.—Passed Las Rincones (The Corners), where a number of mountains appear to come to a point or corner. Scenery very picturesque. Arrived Taos and established our camp 8 miles south of town in a cañon or gorge of the mountain. This is to be the future site of a fort⁶⁹ which we have come to build. Surrounded by mountains, it looks as though we were shut out from the world. While we are waiting for tools to go to work, I am to keep busy buying winter supplies of forage.

Sept. 1.—Tools came yesterday and were put in working order. Men are now at work in good earnest.

Oct. 1.—Houses are progressing well. Begins to grow cold nights. Men are in a hurry to sleep under cover. Lost several men by desertion. They have gone with trains⁷⁰ to California

Nov. 1.—Moved into quarters just two months in building. Called Cantonment Burgwin from an officer who was killed here in 1847.

Nov. 10.—Continue to fit up the Fort. Some, I suppose, have a very vague idea of what a fort is like in this country. The buildings are built of mud brick in a hollow square, leaving in the center what is called a "parade ground" where the military parades are held every morning. One side of the square is used as officer's quarters; the opposite side as a guard house, commissary department, offices, etc. The other two sides are soldiers' barracks. There is a flag staff in the center from which the stars and stripes flash and wave in the breeze. Out of this square are to be found a hospital, dragoon stables, yard, etc. Buildings are all of one story with flat roofs, having a parapet on the top of the outer walls. There are no windows on the outside of the square and only port holes in the parapet through which one may look or shoot.

Dec. 25.—A Christmas dinner that would do honor to the Astor House.⁷¹ Many got jolly. A few good toasts were

69. Named Cantonment Burgwin in memory of Captain John Henry K. Burgwin, who died February 7, 1847, from wounds received in the battle of Taos three days earlier. Bender, "Frontier Defense . . .," 266. He was commissioned 2nd Lieut., July 1, 1830, and Captain, July 31, 1837. (See footnote 27).

70. These are wagon or pack "trains," of course, (C. E. B.)

71. Astor House was a famous New York City hotel.

given. I had to give a short address. Ended by a dance at night in our quarters. The dance broke up at the sound of the drum, announcing the morning of the 26th.

Jan. 1, 1853.—Cold and dreary day. The winds whistle loudly by us. Snow beats against the windows. As I gaze upon the scene without, the mountain which overhangs us and towers almost to the skies, is clothed in its garb of white snow and dark evergreen foliage. The drooping branches of these trees cast a sombre hue upon the rocky clefts upon which these trees are rooted. The long dismal howl of wolves is heard. In fact, viewing winter in its stern reality, brings thoughts of home, friends, and youthful associations to mind. Now commences another year. It may be my last, surrounded as I am by danger. One only knows. His Will, not mine, be done.

Jan. 7.—Started with 4 men for Fort Union to get commissary stores. We took 15 pack mules. Snow is from 3 to 20 feet deep. Dug a portion of our road. Advanced 20 miles through deep ravines where in places only the tops of the pine trees are to be seen. Camped at night. Built a large fire and got close to it and then tried to sleep but I thought I would freeze. Would lie 15 or 20 minutes, get trembling from cold, get up closer to fire, and be literally burning on one side and freezing on the other side of the body. Got through the night, burnt my clothes and blankets trying to keep warm. Two mules died from cold during the night.

Jan. 9.—Spent last night at Mora.⁷² A large flouring mill is here. It is built the same as those in the United States. Arrived Fort Union after crossing a plain 18 miles wide and having the cold north wind almost cutting through a person. It was bad travelling.

Jan. 12.—Monday loaded our mules. Camped in the mountains yesterday. It was not quite so cold as the past few days and nights. Glad to sit down this evening at a good fire at home in Cantonment Burgwin.

Feb. 17.—Company F, 1st Dragoons, passed here. At the store one of their men and one of our company had a

⁷². Village about thirty miles north of Las Vegas.

quarrel and it was carried to such an extent that both went to their quarters, got their arms. Both fired and our man fell wounded through the shoulder. Both were in fault. One was placed in hospital, the other was put in chains as a prisoner in the guard house. The wounded man died, forgiving his murderer.

March 1.—Prisoner is dejected but still exhibits no sign of penitence. He says he is "glad he did it, and would do the same again." The prisoner was delivered over to the Civil Authorities. A Bill of Wilful Murder was found by the Grand Jury.

April 1.—Sent over 20 men to the Commanding Officer for various pretexts where they were informed that they were "April Fools."

May 2.—Left home on a scouting trip to the Navajo Country. Crossed the Rio Grande at a point called Cienequilla,⁷³ a Rancho of 4 houses. Swam our horses. We were obliged to slip off our horses and cling to their tails in order to get across the river.

May 3.—Passed Ojo Caliente,⁷⁴ a large hot spring emitting quite a large stream which flows through a very productive and extensive valley. Probably 1000 inhabitants dwell here. Arrived at Abiquiu⁷⁵ which is a town built upon a hill beside the river, Rio Chama, where it leaves the mountains. Inhabitants number about 1500 souls. Procured quarters here to await orders.

May 21.—Proceeded to Jemez of which I have spoken on Nov. 14, 1851. Travelled through the finest mountain country I have seen. Wild game is here in abundance. Camped in the mountains. Navajo Indians had been here but had left. We returned to Abiquiu.

73. Cienequilla, or cieneguilla, meaning "little marsh," was on the Rio Grande about eighteen miles southwest from Taos. F. T. Cheetham, "El Camino Militar," *N. M. H. R.*, XV, 8. See also War Department maps for the years 1851 and 1864. It is not to be confused with Cienequilla southwest of Santa Fe, settled about 1698. Juan Candelaria, "Noticias," *N. M. H. R.*, IV, 274-297. Bancroft *Arizona and New Mexico*, p. 213.

74. Ojo Caliente lies to the west of Cieneguilla and was the scene of a fight with the Jicarilla Apache after the defeat of Davidson (see note 100). Sabin, *Kit Carson . . .*, II, 661ff.

75. Abiquiú lies in the Chama valley northwest of Santa Fe and was settled as a frontier outpost sometime before 1747.

June 7.—Reports came to Abiquiu quarters that the Navajos had killed 1 white man and 6 Mexicans who were trapping on the San Juan River⁷⁶ about 150 miles from this place in a northwest direction. Orders came to make inquiries of the above matter and report to Santa Fe.

June 17.—Found the rumor to be true. Reported accordingly. We were ordered to move as soon as practical in that direction. 3000 sheep were taken by the same Indians from near here on the 11th of June. Started yesterday with 60 men. Camped on Turkey Creek.⁷⁷ Went 60 miles without water over deep sand. Camped at a small spring where we found two skeletons of some persons who probably had been killed by Indians.

June 19.—Went 60 more miles without water. Camped at a mud hole last night. I reported to my officer that I was "quite unwell." He looked at me and said, "Why, you have got the jaundice." I did find a piece of looking glass and discovered my color would allow me to pass for a mulatto. But there was no help now, I must travel on the trail. Came to Rio San Juan where we found the bodies of the murdered men. Buried them. Went down the river which is large and deep and runs through a wide but rather barren valley. No marks of cultivation are to be seen.

June 22.—This morning came to a cornfield. Thousands of cattle were here not three days ago. About 1 o'clock this afternoon Indians were seen in every direction. At 4 o'clock we encamped. Indians about us in groups in council. A few Indians came into camp. Our interpreter informed them that we had come to talk with them and that we wanted their chiefs to come to our council meeting.

June 24.—About 400 Indians came into camp today. Their chiefs were seated in a semicircle with our officers, guide, interpreter, and me completing the circle. The interpreter was a Mexican and I was called upon to translate from Spanish to English. We demanded the murderers and the stock which had been stolen. In the course of the talk

76. The San Juan river rises in Colorado; it flows through the northwest corner of New Mexico and the southeast corner of Utah into the Colorado river.

77. Turkey or Gallinas creek flows northward and eastward into the Chama river.

a chief came from quite a distance. Our officer presented him with some flour which was in a sack. It was lying on the ground in the center of the circle. Another chief became offended because the same favor was not shone him. He sprang upon his feet, seized the flour sack by the bottom corners, and giving it a swing, scattered the flour to the four winds. Those seated in the circle were given the appearance of an assemblage of millers. Our officer sprang up, drawing his pistol from his belt. We all seized our arms. The Indians sprang upon their horses with bows in hand. Immediate difficulty was expected.

We took this chief prisoner and directed our guide to say to them that the first move that they made, their chief would be a dead man. They cooled down. We held their chief in custody about two hours. He begged for liberation. We had lost all our fresh meat. Before this happened they had refused to sell any sheep to us. Our officer consented to liberate him on these terms: that he should furnish us with 5 or 6 fat sheep. In 15 minutes time a round dozen of the largest and fatest sheep I have ever seen in any country were brought to us. They refused to take any pay. They left with the chief but promised to come into camp tomorrow.

June 26.—No Indians made their appearance yesterday. Met 150 soldiers who had come out to meet us. Remained encamped together this night.

June 29.—We parted Monday. The other party went down the Rio San Juan while we went up the river. We have seen nothing of the Indians. 'Tis evident that they are offended. The Platte⁷⁸ Mountains are in sight. Last night the Indians fired a great many arrows into our camp, probably intending to stampede our animals or perhaps kill someone if they could. They wounded 2 mules so badly that we had to put them out of their misery by shooting them.

Still we go up the river. There came into our camp this afternoon about 60 "Green River Utahs."⁷⁹ They

78. The name La Plata (or Platte) mountains is attributed to a Spanish exploration party in the 1760's. Bancroft, *Arizona and New Mexico*, p. 258, citing the Dominguez-Escalante *Diary*.

79. The Utah (or Ute) Indians roamed over a wide area in Colorado, eastern Utah, and northern New Mexico. The Green river is a branch of the Colorado flowing through western Colorado into Utah.

entered singing and discharging firearms into the air which is a demonstration of friendship with them. They were fine, noble-looking Indians and were mounted on splendid horses. They left before dark.

North and also east of here are located the Snake, Crow, Sioux, and Blackfeet Indians. The Snakes, like the Utahs, are rather friendly and manly with the Whites. They are exceedingly fond of dancing to which gather the young, the fairest, the best, and the most loved of the tribe. Cupid goes there too for after the dance often it happens that some of the sterner sex apply to some "beardless one" for the balm of sweet smiles for his relief. He does not wait for Sunday night. He chooses one of his most valuable horses, goes to the lodge of the girl's father, ties the animal and goes away. The inmates examine the horse and if it is found to be worth as much as the girl, the horse is taken by the parents and the girl becomes a bride. The lodges of the Snake Indians are ever open to the Whites. A guest among them is sacred.

June 30.—Quite different are the Crows who are the most arrant rascals of the mountains. The traders say they were never known to do an honorable act or to keep a promise. The Sioux are no improvement as they ever and anon commit most infamous acts.

The Blackfeet Indians in 1828 stole a number of blankets infected with small pox which caused dreadful havoc among them and struck terror to every heart. The Great Spirit was offended. Their hunts were ended. Their bows were broken. The fire in the pipe was extinguished forever. Their graves called for them, and the call was answered by a thousand groans. Brother forsook sister; father left the son; mother deserted the child. All separated and fled to the mountains. To this very day the unburied bones of 7000 or 8000 Blackfeet lie upon the rocks and in the valleys. Those who remain are still bloodthirsty and wage wars against other tribes and the Whites.

July 2.—Came to the foot of the Platte Mountains which are high, abrupt, snow-capped peaks. A hot burning July sun beat upon us while far above our heads was to be seen pile upon pile of snow and ice. Ascended the mountain.

The very rough trail at times was almost impassable. Camped at night where we could view the past four days' travel.

July 4.—Still ascending. I think no white man ever was here before us. Even the bears seem to stare at us. This is a day long to be remembered. We are on the summit of the Platte Mountains and thousands of feet above the level of the sea. Here one could behold the wonders of the Almighty and feel one's own insignificance. Admiration and astonishment fill the soul. One here feels and acknowledges the power and grandeur of nature. Crags and peaks project themselves outward and seem to frown upon the broken fragments below, which from time to time have fallen. Others point to heaven as if to indicate their Great Architect. 'Tis extremely cold while two days ago we were suffering from the heat.

July 5.—Commenced the descent on the north side where it is almost impossible to find a path down for our animals. It is growing warmer.

July 8.—We have been in a valley again since yesterday. We are once more warm and comfortable. Now going down the south fork of the Platte River.⁸⁰

July 10.—Buffalo are numerous. The north fork of the Platte River goes through a fine valley. Reached Fort Laramie⁸¹ which is a military post in the mountains. One company, United States Infantry, is the garrison. 25 of their men were killed a few days ago by the Sioux Indians. Soldiers are afraid to go outside the fort.

July 15.—A Company of Mounted Rifles, U. S. Army, came in here yesterday. We left for home, today, on a due southwest course. We feel much better after our needed rest. We saw thousands of buffalo and plenty of good water and grass.

80. The south fork of the Platte river rises in central Colorado and flows in a general northeastern direction and joins with the north Platte river.

81. Fort Laramie was in southeastern Wyoming. Bennett's party certainly took a long, rugged trip. See, LeRoy R. Hafen and Francis Marion Young, *Fort Laramie and the Pageant of the West, 1834-1890*. The Arthur H. Clark Co., Glendale, California, 1938).

July 20.—After four days travel struck the mountains near the head of the Arkansas River.⁸² Camped on the mountain last night. We are now on the summit and can see the Arkansas River on one side of us and the Rio Grande River on the other side of the mountains.

July 21.—Descended toward the headwaters of the Rio Grande, passing in sight of where J. C. Fremont⁸³ and his party were frozen up in 1847-48.

July 27.—Passed through the valley of Sangre de Christo and arrived at Fort Massachusetts. Encamped and drew fresh supplies which we needed badly. Feasted on eggs and melons.

August 1.—Moved on slowly toward home. Both man and beast are tired. Camped at Rio Colorado⁸⁴ and Arroyo Hondo which is a small Mexican town situated in a very deep ravine. It is the usual dirty and filthy place. Arrived at Cantonment Burgwin today, needing rest after 3 months almost constant travel in all kinds of country and all kinds of climate.

August 10.—Went to Rayado. Met Kit Carson who went with me to a small Rancho, the Cimarron. A large herd of government cattle were grazing along the stream. Took 50 head and drove them home. Then returned to Taos village. Attended a dance. An American was insulted by a Mexican. Word followed word. The Mexican drew his knife. The American drew his pistol and shot among the crowd, killing one and wounding another Mexican. The American left and has not been heard from since then.

(to be continued)

82. The party is again in central Colorado where the Arkansas rises and flows eastward-southeastward into the Mississippi river.

83. Fremont failed to cross the mountains in December, 1848, losing ten or eleven men in the attempt. For a short account see Sabin, *Kit Carson* . . . , II, 614.

84. See footnote 29.

Notes and Documents

The Utah Humanities Research Foundation, University of Utah, announces the beginning of the *Utah Humanities*, the first number to be published in January, 1947. "This journal of regional humanities" will furnish an outlet for articles in "history, the arts, folklore, anthropology, social studies, science, recreation, and industry." Inquiries and manuscripts should be sent to the Editors, *Utah Humanities*, 309 Library Building, University of Utah, Salt Lake City.

Frances Shiras, "Some Experiences in Writing the History of Baxter County," *The Arkansas Historical Quarterly*, Volume V, Autumn, 1946, might be of interest to students undertaking research in local history.

The Journal of Mississippi History for April, 1946, carries a long poem by Roscoe R. Hill entitled, "The Archivist." When historian turns poet, the results are not too happy; but in this instance the theme is the important part, not the quality of the poetry. Dr. Hill reiterates his long contention that the word *archive* (in the singular form, not plural) should be used to designate the building wherein are housed historical records. The REVIEW hereafter will follow that usage, unless the Editor nods at his task and fails to change the plural to the singular when the word appears in some ms.

Professor Raymond E. Lindgren, Department of History, Vanderbilt University, is working on a study of immigration in the Southwest. He has received a grant-in-aid from Vanderbilt and the Huntington Library.

The following documents are transcribed from microfilm copies in the University of New Mexico library. The originals are in the National Archive, Records of the Office of Indian Affairs, Washington, D. C. Other documents from the same source have been printed in the REVIEW beginning with the April, 1946, number. F.D.R.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.

Sir;

I had the honor to write you, on the sixteenth instant, in reference to a depredation committed near Las Cruces, supposed to have been done by a party of Mescalero Apaches. Since that time I have heard from Agent Steck on the subject, and am now happy to inform you that all but two of the animals have been caught and brought back by the Indians themselves. As soon as the depredation was known, Agent Steck saw the chiefs, and told them the tribe would be held responsible, unless the animals should be returned. They (the chiefs) started a party upon the trail, which, succeeding in coming up with the thieves, retook all the stock, except two mules, or horses, which were restored to the owner. The Indians who went in pursuit, report that they did not get near enough to the thieves to determine whether they belonged to their tribe. It is now supposed, however, that the depredation was committed by some of the Mexican thieves who congregate near a place called Manzana, and were, probably, assisted by one or two Indians. Col. Miles, third United States infantry, commanding Fort Fillmore took a judicious course in the premises, and aided to bring about the happy result.

In this affair the Mescaleros have behaved quite as well as could be expected, and we may view it as an evidence that they desire to remain at peace with us.

I remain,
Very Respectfully,
Your Obdt. Servant,
W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.

Sir;

On the night of the twenty eighth of October, four Indians stole from Mr. José Chavez, in Bernalillo County about one hundred and fifty head of mules. The next day Lieut. Moore, first U. S. dragoons, with some twenty soldiers, went in pursuit, and succeeded in recovering all the stolen animals except about thirty with which the

Indians made their escape. This depredation is supposed to have been committed by the Mogoyon Indians, as the trail led directly towards the country they are known to inhabit. This band, and the Gilanians, have been in the habit of making annual robbing excursions into the same section of the country in the fall of the year, to procure food to last them through the winter. I wrote to Agent Steck upon the subject and instructed him to use every possible exertion to discover whether the Mescalero or Mimbres Apaches, with whom we have treaties, had anything to do with the depredation.

About the same time, and in the same section of the country, a small party of Indians stole eight mules, and four horses from a Mr. Rafael Luna, which were not recovered; and two thousand sheep from the same gentleman, and three thousand from Anastasio Garcia, which were retaken by a party of citizens who went in pursuit. The trail of the Indians, who committed these latter depredations, led in the same direction as the former, and they are also supposed to have been the Mogoyons or Gila Apaches.

Up to this time, the Indians, with whom treaties were made during the past summer and fall, are in a state of profound peace, and there is every appearance that they will remain so.

I remain,

Very Respectfully,

Your Obedt. Servant,

W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.

Sir;

Since I wrote you yesterday I have received a communication from Agent Steck, informing me of depredations committed by the Mescalero Apaches, in the southern part of the Territory, one of which was within a mile of his agency. On the night of the twenty fifth ultimo, four Mescaleros crossed from the east side of the Del Norte to a ranch near the agency, and attempted to steal corn. A man who was on watch killed one of them, when the others dropped the corn they had in their blankets, and made their escape. They also left their blankets and the dead body behind, but neither have been reclaimed. The dead Indian was recognized as a Mescalero. The other depredation, reported, was committed near Las Cruces on the twenty ninth ultimo, when they stole sixteen head of horses and mules from a

Mr. Fletcher; and Agent Steck feels confident, from the circumstances attending it, that the depredators were Mescaleros. I will cause the necessary means to be resorted to, in order to fix the offence upon the proper band.

I remain,
Very Respectfully,
Your Obdt. Servant,
W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Washington City
January 18th 1856

Sir

I have the honor to acknowledge the receipt of your communication of the 16th inst, enclosing a letter from the Acting Governor of New Mexico relative to granting licenses to trade with the Pueblo Indians of that Territory, and requesting my views upon the subject before you make up an opinion.

The 2d section of the Intercourse Act of 1834 prohibits trade with the Indians "*within the Indian country,*" but I am not aware of any statute that prohibits such trade unless it be carried on in the Indian country, then this question arrises, are the Pueblos within the Indian country or not? The District court of the United States for the Territory of New Mexico has decided that there is no Indian country within this Territory, and although the correctness of this decision is, and may well be doubted, is it not better to acquies in this decision, unless there is a necessity for granting licenses to those who desire to trade with these Indians.

Within the Territory of New Mexico, there are some twenty vilages of partially civilised Indians, called Pueblo Indians, these vilages, or Pueblos, are situated in various parts of the Territory, and in many instances in immediate contact with and surrounded by the white settlements; these Indians hold their lands by grants from the governments of Spain and Mexico, as stated by the Acting Governor, they have long since abandoned the chase, and cultivate the soil for a subsistence, having nothing to trade except the produce of the soil. Several of these Pueblos are situated within a few miles of Santa Fe the Capitol of the Territory, the Indians bring their corn, wheat, fruits and vegetables to that market, and I can see no necessity or propriety in requiring them to sell exclusively to those having licenses to trade with them, and after having sold I cannot see the propriety of requiring them to purchase alone of merchants having licenses. Is there then any necessity or propriety in prohibiting persons desirous of purchasing the surplus produce of these Indians, going to the Pueblos and doing so without a license.

But if any white person or persons shall locate themselves either as traders or otherwise, upon the lands granted to any Pueblo, I think that the 11th section of the Intercourse Act before referred to, will prove more effectual in procuring their removal, if desirable, than to proceed against them for trading without license. The letter of the Acting Govr. is herewith returned as requested.

I have the honor to be
very respectfully
Your obt. Srvt.
D. Meriwether Govr.
and Supt. of I A in N. M.

Hon. G. W. Manypenny
Com of Indian Affairs
Washington City

Head Quarters 3d Inf.
Fort Fillmore, N. M.
12th October 1855-

Dear Governor.

Enclosed you will receive an extract of a communication I have deemed it my duty to make to Genl. Garland the commander of the Department, in reference to the Mezcalarie Apaches-

The constant intercourse I have had with them for the last three months, has made me better acquainted with their wants and wishes than any white man & I state to you earnestly if their welfare is to be considered and the object of the Government that their Treaty should be observed inviolate, they must have an agent of their own.

Although speaking nearly the same language of the Gila Apaches, they have but little intercourse with them—in fact they are exceedingly jealous of them—You know, that war does not unite them, nor have they any close affinities by intermarriage—On the contrary, they separate in war and the peaceable tribe will give information of the whereabouts and acts of the belligerent one, besides are frequently at war with each other, and each nation the place of refuge of all the bad, flying from justice of their tribe.

Should you be influenced by these views to recommend to the Honbl. Secty. of the Interior an agent for the Mezcalarie Apaches, I most respectfully commend to your especial notice as a very suitable person for the Office, Col. Augustus B. O'Bannon, originally from South Carolina but for the last two years a resident of Donña Aña County of this Territory—Col. O'Bannon's antecedents entitles him to the gift of an office from the Government; he served with distinction in the gallant Palmetto Regiment throughout the Mexican War, as an Officer, he is a faithful, true Democratic that loves his country.

There is no one of my acquaintance so peculiarly adapted to perform the duty of agent, for these Mezcalaries, more patiently, ener-

getically, justly and honestly than Col. O'Bannon, thereby if you recommend him for the station, conferring an obligation on me, yours and his many friends in this section of country and securing to the Government an intelligent and faithful Officer.

I am Governor,
Most Respectfully
Your Obt. Servt. & Friend
L. J. Miles
Lt. Col. 3d Inf.
Comdr. Regt.

To his
Excellency
Gov. D. Merriwether
Gov. of New Mexico
Washington City, D. C.

Extract

Head Quart, Fort Fillmore
N. M. 11th October 55

Major.

The Mezcalero Apaches are quiet and seem disposed to be peaceable, they are very destitute and greatly in want of food. They frequently visit me in small parties and to induce them to continue to do so, I have liberally issued to them flour and fresh beef. They are very anxious for the return of their Treaty, that the agent may give them something to eat.

I feel confident without the issue of rations to these people they must starve or steal. They should have an agent of their own. Dr. Steck one of the best I ever knew, being identified by them, with the Gila Apaches, can never acquire their entire confidence or control them; and if he succeeds, would lose his influence over the Gillanians; for there is considerable jealousy between these Tribes..

I am Major
Respectfully,
Your obt. Servt.
L. J. Miles
Lt. Col. 3d Inf.
Comdr.

To
Maj: W. A. Nicholls
Asst. Adjt. Genl.,
Dept. of New Mexico
Santa Fe,
N. M.

Book Reviews

The Westward Crossings. Jeannette Mirsky. (New York, Alfred Knopf, 1946). \$4.00.

The three crossings of the North American continent by Balboa, Mackenzie and Lewis and Clark were intended to seek definite objectives for their respective countries: gold for Spain, furs for the Hudson's Bay Company, and a highway of commerce for the United States. Miss Mirsky has given in brief compass the three most engrossing stories of North American exploration with the chief criterion of having reached the Pacific satisfied.

Vasco Núñez de Balboa's contribution to exploration was meager, but he did climb the mountain range separating the Caribbean from the Pacific and did point the way to maritime penetration of the middle Pacific. From Panama ships were to go southward to Peru, north to Acapulco and California and across the Pacific to the Philippines. Balboa, according to Miss Mirsky, was a kindly, noble, courageous, and fearless individual; her portrait is highly prejudiced and colored. As to his contributions, she stresses the brief climb over the mountains to the Pacific and then speculates on what he might have done had he not been the victim of Pedrarias Dávila's venomous hatred. No one can doubt the importance of the discovery of the Isthmus passage, but to discuss Balboa's future had he lived is idle and useless verbosity.

The second of the westward crossings is that of Sir Alexander Mackenzie through British Columbia. Mackenzie plunged into unexplored country up the Peace River, south down the Parsnip to the divide, portaged across to the Bad River, up the Blackwater and across to the Bellacoola and to Dean's Channel where his party saw the Pacific. The return to Fort Chipewyan was comparatively safe. The journal of the trip which eventually won Mackenzie fame and recognition has neatly been condensed by Miss Mirsky leaving the reader with a grasp of the whole in illuminating speech.

The third of the crossings is that of Meriwether Lewis and William Clark by the route of the Missouri, across the divide to the Salmon and finally the Columbia to the Pacific; on the return the party divided and followed separate routes to the junction of the Yellowstone and Missouri Rivers. It would be hard to give briefly the background of the expedition, the details of the trip and the results, but Miss Mirsky has conveniently bridged the gap between sensible condensation and retention of the full flavor of the seven volumes of the original narrative.

The value of synthesis is undoubted if the work has a purpose. Miss Mirsky has tied together the three crossings with only a tenuous bond of slim history, and few can perceive the reason for including three such momentous expeditions in a single volume. Peter Martyr forms the introduction to Balboa; Peter Pond performs the same function for Mackenzie; and John Ledyard stimulated Jefferson to arrange the Lewis and Clark expedition. Through this device Miss Mirsky broadens the scope of her work and gives the more general reasons for these explorations and their results. Her summaries of the journals of Mackenzie and of the Lewis and Clark expedition are skillfully done and should be commended. The Balboa episode is more than skill in the freedom with which Miss Mirsky creates the stage upon which Balboa operated.

Miss Mirsky's mistakes are those of lack of breadth in historical knowledge. Four examples will suffice to show that her historical "plaster" covering the gaps is sometimes erroneous or misleading. The Russian Great Northern Expeditions of 1741 were primarily to explore Siberia and not to ascertain the outline of the seacoast; the Hudson's Bay centennial was more likely celebrated in 1770 and not 1763 as the company was founded in 1670; the official rank of Clark was that of second lieutenant and not captain, the latter a courtesy title given by Meriwether Lewis to give Clark the same status as himself; Mackenzie believed the Fraser to be the Columbia, and Miss Mirsky makes the mistake of not correcting this error. But the carping historian

should be satisfied that literary style and historical fact are combined to an abundant degree, and the public, for which Miss Mirsky writes, will be completely satisfied with the book.

A short bibliography, useless for the professional historian, is satisfactory for the lay reader. The index is limited, but surprisingly effective. The utmost care has been taken in the selection of the book's twenty-four maps and illustrations; the three maps are particularly indispensable because of the difficulty of following exploration routes without the aid of geographical devices. Miss Mirsky should be commended for her excellent performance of a difficult task.

RAYMOND E. LINDGREN

Vanderbilt University

Necrology

ERNEST THOMPSON SETON, 86, world-famed author and authority on Indian lore and wildlife, died this morning at his home in Seton Village, 10 miles south of Santa Fe. Still active despite his years, Seton only a short time ago completed his 42nd book and had made plans for a 10,000-mile lecture tour. He also helped place a new roof on his 50,000-volume library not long ago.

S L H

His best known book probably was "Wild Animals I have Known," published in 1898. It contained 200 of his drawings. This book attracted the attention of Theodore Roosevelt and the two became great personal friends. Rudyard Kipling also said the volume led him to write his "Jungle Tales." *The Daily Current-Argus* (Carlsbad, New Mexico), October 23, 1946.

RICHARD P. BARNES.—Judge Richard P. Barnes, pioneer New Mexico attorney, died at 10:30 a. m. today at the family home, 925 N. Eleventh. He would have been 88 on January 29, next year.

Judge Barnes had been in failing health for the past few years. He had continued to practice, however, and up until Oct. 7 had been in his office daily in the Cromwell Building. On Oct. 18, he insisted on leaving his bed to complete what was his last legal errand at the office.

About three years ago, Judge Barnes planned to retire and was given a dinner by the local bar. His feeling for the law, however, was so pronounced that he stayed away only a few days at a time and always returned to his practice.

Judge Barnes was born in Carthage, New York in 1859. His early education was in Virginia schools. In 1885, when Silver City was a wild, unruly mining town he came there and settled. He studied law in the office of Conway and Posey and was admitted to the New Mexico bar.

In 1915, he moved to Albuquerque and established a law practice. He served in several public positions, the first of which was a member of the 33rd Territorial Legislature

in 1897 from Grant county. He was district attorney of the Third Judicial District in 1899-1900 and a member of the state legislature in 1917 and 1919 for Bernalillo. In 1928 he was appointed to the State Supreme Court.

Mrs. Barnes died here in June, 1933. Besides Mrs. Coon, he is survived by two other daughters, Mrs. W. F. Ritter, El Paso, and Mrs. M. P. Walker, Tucson, and a son, C. B. Barnes, New York City.

In the early days he joined the Elks at Silver City and at one time was exalted ruler of that lodge. He had been a member of the State Bar Association since its formative days.

On his 85th birthday he stated that he was looking forward to many more birthdays. "I want to vote again, read the papers and see the end of the war, the usual activity of a good citizen," he observed then. *The Albuquerque Tribune*, November 11, 1946.

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New Mexico Historical Review

HISTORICAL DEPT.



PALACE OF THE GOVERNORS, SANTA FÉ

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BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER IV

TRANSITIONAL JUSTICE

PERIODICAL DEPT.

SHORTLY before the military occupation of New Mexico gave way to the civil government of the Territory, an alcalde at Tomé demanded the church keys from the Catholic priest who was stationed there and removed from the House of God its sacred vestments and consecrated vases, then turned them over to Nicolas Valencia, a former priest who had been suspended from the clergy for his non-conformist views.

In Santa Fe Donaciano Vigil, acting governor of New Mexico following the assassination of Governor Bent, suspended the Vicario, chief representative of the Church, from exercising ecclesiastical functions on the ground that his ministrations were inimical to the American institutions which were gradually being introduced.

These and similarly unwarranted infringements upon the rights of the Catholic church soon caused threats of rebellion. Colonel R. H. Weightman, a churchman and one of its staunch defenders, sent a pointed warning to Colonel Monroe on June 18, 1850, about the likely consequences of this interference by secular authorities in affairs of the church. Nevertheless, such incidents of molestation continued.

Weekly Gazette that Judge Baker was "lying in a state of beastification in one of our lowest doggeries."²

Scarcely had the new judge arrived in Santa Fe when he clashed headlong, too, with Bishop Lamy. Judge Baker held his first session of the district court in Santa Fe at the *Castrensa*. Upon impaneling the jury, it developed that Governor Donaciano Vigil was one of the number summoned and that His Excellency objected to being sworn for the reason that "the court was being held in a place consecrated to sacred objects";³ that the forefathers of himself and many others present were there buried; that with all due respect to the civil authority, which both he and the judge represented, he protested against the use of the chapel for civil purposes, and begged to be excused from serving the court where he could not help feeling that he was treading upon the ashes of his ancestors.

Whereupon Judge Baker, having apparently indulged a bit freely in distilled spirits, publicly announced that he would have both the bishop and Father Joseph P. Machebeuf, the prelate's right-hand man, hanged from the same gibbet.⁴

The morning following these indiscreet remarks public indignation seethed through the city. A petition was circulated and signed by over a thousand residents, Catholics and Protestants, civilians and soldiers alike, asking for justice and a return of the church property to the bishop. In the meanwhile an excited mob gathered near Judge Baker's residence. Fearing the temperament of the agitated mob, His Honor called upon the military authorities for protection, but they respectfully declined to intercede. It remained for Father Machebeuf and a subordinate officer from the post to stand between the mob and the judge, who finally begged for mercy and promised to do justice. In the evening Judge Baker called on the bishop, apologized for his indiscretion and the next day in open court turned the chapel over to

2. Loomis Morton Ganaway, "New Mexico and the Sectional Controversy, 1846-1861," *NEW MEXICO HISTORICAL REVIEW*, vol. 18, p. 227.

3. Twitchell, *Military Occupation of New Mexico*, p. 223.

4. R. E. Twitchell, *Leading Facts of New Mexican History* (Cedar Rapids, 1912), vol. 2, note 257, p. 330.

Bishop Lamy in the presence of the governor and other civil and military leaders. A room in the old Palace was thereafter engaged for use of the court.

W. W. H. Davis describes one of the first meetings of Judge Baker's court which he attended in Santa Fe.⁵ A trial was in progress upon an indictment for murder. Four Nambe Indians were charged with murdering two of their fellow tribesmen for having practiced witchcraft and for consuming the little children of the pueblo. The accusers maintained they saw the two victims pulling the bones of the infants apart with their mouths. The evidence indicated that the Indians had assembled their council which had condemned the unfortunate victims to death and that at dusk that same day, the latter had been conducted a short distance from the pueblo and shot. They had been made to kneel down side by side and were thus killed by the same fire. Only four of the responsible Indians had been indicted for the reason that their part in the slaying could be more easily proved than that of the others. Fortunately for the defendants, the killing had occurred on or near the line between two counties. They were eventually turned loose because it could not be shown on which side of the line the crime was committed!

Mr. Davis also calls attention to one of several perjury cases which grew out of a most serious problem confronting the courts during the first few years following the American occupation; namely, the political status of native Mexicans within the Territory.⁶ The eighth article of the Treaty of Guadalupe Hidalgo provides that all Mexicans who lived in the territory ceded to the United States might, if they desired, retain their rights as citizens of Mexico by making an election to that effect within one year after ratification of the treaty. Nothing was specified as to the manner in which this election was to be evidenced, and the entire procedure seems to have been left to the government to decide or to the persons individually to determine. In any event, in the

5. Davis, *El Gringo*, pp. 175-177.

6. *Ibid.*, pp. 177-180.

spring of 1849, Colonel Washington, then military governor of the Territory of New Mexico, had proclaimed that all those who desired to retain their Mexican citizenship should appear before the probate judges of their respective counties on or before the following first day of June and then and there signify their intention to remain citizens of Mexico. The clerk of the probate court was required to attach a certificate to the record in which the names were enrolled, and to deliver the record thus authenticated to the Secretary of the Territory who was instructed to have the record published and to send a copy to each county.

Complications resulted when in the 1853 election many of these persons whose names appeared on this record as electing to remain Mexicans sought to exercise the right of franchise in the Territory. Some of them now upon being challenged swore that they were citizens of the United States. Several of these were afterward indicted for perjury. After listening to lengthy arguments on both sides, Judge Baker held that the book containing the list of names was not a legal record and not admissible as evidence. He further concluded that the proceedings on the part of Colonel Washington were without authority of law and illegal, and that those who attempted to make their election in this manner had not parted with their rights as citizens of the United States.

Growing out of this same troublesome question was the election contest suit of *Quintana v. Tompkins* (1 N. M. 303) in which Chief Justice Baker wrote the opinion for the Supreme Court. The case involved two candidates for justice of the peace in the September, 1852, election. Nicolas Quintana was declared elected by the probate judge, but R. H. Tompkins contested his election, and on appeal to the district court, the latter reversed the judgment of the probate judge on the ground that Quintana was not a citizen of the United States and was, accordingly, disqualified from holding office.

The Supreme Court in reviewing the facts in the case found that Quintana had acted under the provision of the

treaty and had signified his intention in proper form to retain his Mexican citizenship. Though there was some showing that he had later repented this action, the Court upheld the district court in its finding that Quintana was still a Mexican and accordingly was not entitled to the office.

Early in 1853, Chief Justice Baker wrote the opinion in a case in which his opponent and predecessor, Judge Houghton, was a party.⁷ The partnership of Eugene Leitensdorfer and Joab Houghton had been served with a writ of attachment to recover some \$8,297.92 under a contract which had been entered into on the basis of the old Mexican laws. The case had been initiated in the pre-Territorial Superior Court in Santa Fe which had given judgment against the partnership. Judge Houghton and his attorneys on appeal presented the argument that the old court in reality was not a court in contemplation of law, and hence that the cause did not have legal existence. The Supreme Court ruled against Judge Houghton's contention, finding that the laws and courts established as part of the provisional government were valid, and that the legislative assembly could and properly did transfer causes from the provisional tribunals to the Territorial courts.

In the year 1846 a conquest was made of this territory by the Americans under General Kearny. The civil government then existing here having been completely overthrown and destroyed, a provisional or temporary government was established in its stead by the conquering general, under and by authority of the president of the United States, as commander in chief. This was recognized and sanctioned by the law of nations. By that authority the circuit courts were established, their jurisdiction vested, and the proceedings therein regulated.⁸

Judge Houghton, Kephart and others continued their bitter attacks upon Judge Baker and sought through devious devices to secure his removal from office. Far-fetched letters and even pamphlets were forwarded to Washington derogating the judge's official conduct. James L. Collins wrote the president that Judge Baker had come to New Mexico "for

7. *Leitensdorfer v. Webb*, 1 N. M. 34.

8. *Ibid.*, p. 43.

the purpose of purchasing slaves to work the mines of New Mexico."⁹

As a result of these charges President Fillmore was seriously considering dismissing Chief Justice Baker when the judge himself, aware of the seriousness of the situation, hurried to Washington. In replying to the indictment against his behavior, Judge Baker named William S. Messervy, a disgruntled member of the Weightman faction, as originator of most of the charges. Messervy, who was at the time paying a visit to his old home in Boston, also turned up in Washington, where he joined with Hugh N. Smith in making an unsuccessful protest against continuing Judge Baker in office. The judge convinced the president of his satisfactory conduct, and issued the warning that Houghton's party in New Mexico was bent on ridding the Territory of all southerners. He added that Kephart, Collins and Judge Houghton were so bitter in their onslaught against southerners, and had aroused such resentment among New Mexico emigrants from Dixie, that his enemies would reap an unjust victory if he were not continued at his post.

President Fillmore did not disturb the judge, but President Franklin Pierce, upon his inauguration in March, 1853, failed to continue him in office. Upon the expiration of his term Judge Baker returned to Mississippi.¹⁰

CHAPTER V

DAVENPORT FROM DIXIE

Most colorful among the prominent freighters and explorers of New Mexico during the period following immediately upon the American occupation was an iron-nerved Canadian named Francis X. Aubry. By 1847 he had established a prosperous business transporting goods to Santa Fe from the Missouri river towns. Unlike his competitors who usually made one expedition in the summer,

9. Ganaway, in *NEW MEXICO HISTORICAL REVIEW*, vol. 18, p. 227.

10. This is based upon the fact that Judge Baker's personal property re-appeared upon the personal property tax rolls in Mississippi after the expiration of his term in 1853. Letter from Miss Charlotte Capers of Jackson, Miss., Aug. 24, 1944.

Aubry made several trips a year. The speed with which his caravans pushed along soon won for his freighting service the title of "Lightning Express."

Early in 1848 after arriving in Santa Fe on one of these expeditions from Missouri, Aubry made a bet—a wager of \$1,000 that he could be back in Independence, Mo., in eight days. Preposterous and impossible was the reaction of many throughout Santa Fe. Others felt that if anyone could, this man Aubry would, and, as George D. Brewerton, writing an article entitled "In the Buffalo Country" for *Harpers' Magazine* declared, "many were the boots, and numerous the hats, to say nothing of the 'tens' and 'twenties' which were hazarded upon Aubry's intentions."¹

Aubry won his wager, reaching Independence on the eighth day, but as Albert D. Richardson reports in his *Beyond the Mississippi*, he was so stiff he had to be lifted from the saddle. Aubry himself broke this record the following year. From a friend in Santa Fe he brought with him to an Independence newspaper man, a message which bore this most appropriate prefatory note, "Allow me to introduce to you the man to whom the telegraph is a fool."²

In December, 1852, new markets having opened in California, Aubry set out for the Pacific with 5,000 head of sheep. The return trip was beset with many difficulties—hostile Indians attacked savagely, wounding twelve members of his party, and his favorite mare was sacrificed along with many other horses as a source of food when supplies gave out; but on Sept. 10, 1853, he reached Albuquerque, completing the first investigation of a route along the thirty-fifth parallel to California. Aubry made an elaborate report about his findings on this trip which was printed in Major R. H. Weightman's newspaper, the *Amigo del Pais*.

Aubry made a second California trip in the summer of 1854 in thirty-five days. On August 18, shortly after returning from this expedition, while in Santa Fe, he stopped in at

1. Walker D. Wyman, "F. X. Aubry: Santa Fe Freighter, Pathfinder and Explorer," *NEW MEXICO HISTORICAL REVIEW*, vol. 7, pp. 2-3.

2. *Ibid.*, pp. 3-4.

Mercure's bar. Major Weightman walked in and after an amiable greeting the two men had some drinks. Aubry questioned Weightman, who was serving as the New Mexico delegate to Congress at that time, about his paper and Weightman replied that he had let it die for lack of subscribers. Aubry, who was irked about an article contradicting his claim of having found a new pass to California that had appeared in the *Amigo del Pais* the preceding fall,³ replied that any such lying paper ought to die. Weightman picked up his container with liquor and soused Aubry in the face. Aubry drew a pistol from the side of his belt and accidentally (presumably while cocking it) sent a bullet whizzing through the ceiling. Weightman instantly drew his Bowie knife and sank it into the freighter's body.^{3a}

Chief Justice J. J. Davenport, who had been appointed by President Franklin Pierce as successor to Grafton Baker, and like his predecessor a barrister from Mississippi, sat as the committing magistrate for Weightman. Judge Davenport released Weightman under a \$2,000 bond pending trial. Despite much conflicting evidence, what appears to have been a very fair trial was had before Judge Kirby Benedict. Benedict instructed the jury that inasmuch as Aubry had drawn his pistol, Weightman had no reasonable and safe means of escaping the danger in which he had been placed without taking the life of Aubry, and Weightman was acquitted on grounds of justifiable homicide.

One of the problems which confronted the Supreme Court during Davenport's term as chief justice was to define the proper relationship between justices of the peace and the district courts because they were constantly crossing swords. Under the Territorial organic act jurisdiction of justices of the peace was limited by providing that such precinct officers

3. Twitchell, *The Military Occupation of New Mexico*, p. 385.

3a. Twitchell in *Leading Facts of New Mexican History*, vol. 2, pp. 307-308, quotes from testimony of Henry Mercure taken at Weightman's trial which indicates Aubry was stuck "in the belly below the navel" and that Aubry died in about ten minutes. Read in *Illustrated History of New Mexico* quotes another eye-witness account by Don Demetrio Perez, who said that Weightman, drawing his dagger, "plunged it into Aubry's heart, dying that very instant."

did not have jurisdiction in any controversy where title or boundaries to land were in dispute, or where the debt or sum claimed exceeded a hundred dollars. Nothing was said, however, as to whether there was any restriction on the district courts when the debt or sum claimed was below one hundred dollars. Chief Justice Davenport wrote the opinion for the Supreme Court which was designed to settle this argument. He held that the district courts had concurrent jurisdiction with justices of the peace in cases where the amount involved was less than a hundred dollars.⁴

In another case further clarifying the relationship between district courts and justice of the peace courts, Judge Davenport set forth the now well-established rule that on an appeal from a justice of the peace to the district court, the case is tried *de novo* (anew) on its merits in the district court, thereby giving that court original jurisdiction rather than the status of an appellate tribunal.⁵

One of the most interesting and novel cases which ever went through the courts of New Mexico reached the Supreme Court during the January term of 1857. This is the well-known controversy which arose between the two Indian pueblos of Laguna and Acoma over the ownership of an oil painting of San Jose, the patron saint of the pueblo of Acoma.⁶

Early in the days of the Spanish conquistadores, some of these adventurers left with the pueblo of Acoma an oil painting of San Jose upon cloth or linen which had been placed by the Indians in their church as an adjunct of worship. The painting came to be regarded by them as essential in their devotion to God and was thought to bring them fortune by drawing rain and yielding bountiful crops. The pueblo of Laguna, some years past, had borrowed the painting under pretense of a loan to celebrate *semana santa* (holy week), but after the feast they set up a claim to the impasto and refused to return it to Acoma. The people of Acoma

4. *Romero v. Silva*, 1 N. M. 157.

5. *Archibeque v. Miera*, 1 N. M. 160.

6. *Laguna v. Acoma*, 1 N. M. 220.

sought relief through the ecclesiastical authorities. Under the direction and supervision of the *curae* (priests) lots were cast for the painting. Twelve slips were placed in a vessel covered with a white cloth. All of these slips were blank except one which had on it a picture of San Jose. Two little girls, one from each pueblo, were then placed on a table and drew the lots one by one in turn. The first, second, third and fourth tickets were blanks, but on the fifth the little girl from Acoma drew the likeness of San Jose. The priests thereupon declared that God had decided the case and the painting was returned to Acoma.

A short time later, a party from Laguna climbed the Acoma citadel and headed toward the church. Asked as to their mission, they menacingly declared that they had come to get the painting of the saint and threatened to demolish the door if it was not delivered. The priest, asked what should be done and shivering at the sight of the militant Laguna Indians, advised the Acomas to give up their heirloom.

The case was tried before Associate Justice Benedict in Valencia county. Judge Benedict decreed that the canvas should be returned to the Acomas. The Indians from Laguna appealed to the Supreme Court and Chief Justice Davenport wrote the court's opinion affirming the lower court.

The people of Acoma, however, had still another serious problem which endangered their very homes upon the famous rock. The title documents to the lands upon which their pueblo had been built had vanished from their legal repository. The petition to the third judicial district court alleged that these muniments of title which had come to them through the King of Spain or his Viceroy, had been deposited in the archive at Santa Fe, but had through some unknown medium come into the hands of Victor de la O and others, and that these persons refused to return them unless the Acomas paid them the prohibitive sum of six hundred dollars.

Justice Benedict wrote the opinion of the Supreme Court in which the trial court was upheld in its decision

that the finders or holders of the documents upon their delivery could not exact tribute from the true owners. In concluding his opinion in the case, Justice Benedict made the following descriptive and colorful observation:

Having closed our review of the merits of the case, we may be indulged in reflecting, that of the highly interesting causes we have had to consider and determine during the present session, this is the second in which this pueblo has been the party complainant. The first keenly touched the religious affections of these children of the Rock of Acoma. They had been deprived by a neighboring pueblo of the ancient likeness in full painting of their patron or guardian saint, San Jose. However much the philosopher or more enlightened Christian may smile at the simple faith of this people in their supposed immediate and entire guardian of the pueblo, to them it was a pillar of fire by night and a pillar of cloud by day, the withdrawal of whose light and shade crushed the hopes of these sons of Montezuma, and left them victims to doubt, to gloom, and to fear. The cherished object of the veneration of their long line of ancestry, this court permanently restores, and by this decree confirms to them, and throws around them the shield of the law's protection in their enjoyment of their religious love, piety and confidence. In this case, the title that Spain had given this people, confirming to them the possession and ownership of their lands, and the rock upon which they have so long lived, was found in the hands of one professing to be of a better-instructed and more civilized race, and turned by him into the means of extortion and money-gathering from the unoffending inhabitants.

It is gratifying to us to be the judicial agents through which an object of their faith and devotion, as well as the ancient manuscripts, that is the written evidence that established their ancient rights in their soil and their rock, are more safely restored and confirmed to their possession and keeping.⁷

CHAPTER VI

WHEN BENEDICT WAS CHIEF 1858-1866

The most bizarre of all New Mexico Territorial Supreme Court judges was the man who succeeded Chief Justice Davenport. He was Kirby Benedict, appointed by President Abraham Lincoln as chief justice, although he had pre-

⁷ *Victor de la O v. The Pueblo of Acoma*, 1 N. M. 226 (Chicago, Callaghan & Co., 1897), pp. 237-238.

viously served as an associate justice under appointment from President Franklin Pierce in 1853.

Little is known of Judge Benedict's early life except that he was born in Connecticut in 1811. When he was still quite young he came to Illinois where he grew up and became an intimate friend of both Stephen A. Douglas and Lincoln. After being admitted to the bar in Illinois Benedict enjoyed a successful law practice until he was appointed associate justice on the New Mexico Supreme Court April 5, 1853. Upon arrival in Santa Fe he was assigned to the old third district which comprised the counties of Taos and Rio Arriba with headquarters at Taos. Here he continued as the presiding judge for five years, after which time he was named chief justice and moved to Santa Fe. In 1860 Taos and Rio Arriba counties were added to the first district.

When Lincoln ascended the presidential chair he was besieged by political aspirants to remove Benedict and to appoint a man of his own political party to fill the position, but Lincoln emphatically rejected the proposal. Questioned for his reason, he told them that throughout the years he had enjoyed too many happy hours in Benedict's company and that the judge was too good and glorious a fellow for him to remove, and he didn't.

Judge Benedict was opposed to secession in any form and deemed it the duty of every citizen to aid in maintaining the Union. Even when the Confederates under Brigadier General H. H. Sibley occupied Santa Fe, Judge Benedict maintained a strong position in this regard.

When news reached Santa Fe that Fort Sumter had been fired upon by the Confederate Army, Judges Benedict and Houghton, according to a prominent Santa Fean of that day, spent a whole day closeted in a room at the rear of one of Houghton's wholesale establishments in Santa Fe, excitedly debating the proper course to be followed by them. The result was a decision to stick with the Union whatever happened.¹

1. N. M. Bar Association, *Minutes*, 1890, p. 51.

It was Benedict's belief that many of the exponents of neutrality in the Civil War were advising such because of the pressure of the Federal troops in New Mexico and that they were Confederates at heart. In what he termed "an entirely private letter" to President Lincoln, he expressed misgiving concerning the loyalty of many residents of New Mexico. He attributed much of the trouble to President Buchanan's failure to give any of the free states much chance in the appointments for New Mexico. According to Judge Benedict southern officials had been instrumental in bringing into the Territory southern extremists who not only wanted to improve their economic position but were determined to impose their own customs on the inhabitants.

Judge Benedict testified that a veritable system of peonage existed in New Mexico. He reported that in addition to Indian captives, orphans and children of the destitute continued to be sold into slavery as they had been during the former Mexican days, by their own relatives. He said that a sound, healthy and intelligent girl of eight years was worth around \$400. The children of peons were not regarded as salable property, however, but were treated as citizens. He estimated there were from 1,500 to 3,000 peons in the Territory.² Judge Benedict pointed out that though under various court decisions the Indians were entitled to their freedom, they did not seek the aid of the courts to obtain their release from bondage. He observed further that persons who held such Indians in servitude were extremely sensitive of their supposed interests in them, and would quickly seek to stop any movement to resort to the courts which might appear as an effort at dispossessing them of what they considered their property rights.

As a writer Judge Benedict was a master of satire, sarcasm and ridicule. He was a man of fine literary taste and ability and some of his opinions are masterpieces of legal literature. Few are those New Mexicans who are not familiar with the interesting anecdote relative to Judge

2. Bancroft, *Arizona and New Mexico*, p. 681, note 2.

Benedict's famous sentence pronounced upon the convicted murderer, Jose Maria Martin, in the Taos county district court. The state of facts proved upon the trial showed utmost brutality on the part of the murderer, and there were no mitigating circumstances to lessen the sharpness of Judge Benedict's historic sentence:

JOSE MARIA MARTIN, stand up! Jose Maria Martin, you have been indicted, tried and convicted by a jury of your countrymen of the crime of murder, and the court is now about to pass upon you the dread sentence of the law. As a usual thing, Jose Maria Martin, it is a painful duty for the judge of a court of justice to pronounce upon a human being the sentence of death. There is something horrible about it, and the mind of the court naturally revolts from the performance of such a duty. Happily, however, your case is relieved of all such unpleasant features and the Court takes positive delight in sentencing you to death!

You are a young man, Jose Maria Martin—apparently of good physical condition and robust health. Ordinarily you might have looked forward to many years of life, and the Court has no doubt you have, and have expected to die at a ripe old age; but you are about to be cut off in consequence of your own act. Jose Maria Martin, it is now spring-time. In a little while the grass will be springing up green in these beautiful valleys, and on these broad *mesas* and mountainsides flowers will be blooming; birds will be singing their sweet carols, and nature will be putting on her most gorgeous and her most attractive robes, and life will be pleasant and men will want to stay, but none of this for you, Jose Maria Martin. The flowers will not bloom for you, Jose Maria Martin; the birds will not carol for you, Jose Maria Martin; when these things come to gladden the senses of men, you will be occupying a space about six by two beneath the sod, and the green grass and those beautiful flowers will be growing above your lowly head.

The sentence of the Court is that you be taken from this place to the county jail; that you be kept there safely and securely confined, in the custody of the sheriff until the day appointed for your execution. (Be very careful, Mr. Sheriff, that he have no opportunity to escape and that you have him at the appointed place at the appointed time.) That you be so kept, Jose Maria Martin, until—(Mr. Clerk, on what day of the month does Friday, about two weeks from this time come? March twenty-second, your Honor). Very well,—until Friday, the twenty-second of March, when you will be taken by the sheriff from your place of confinement to some safe and convenient spot within the county (that is in your discretion, Mr. Sheriff, you are only confined to the limits of this county), and that you be there hanged by the neck

until you are dead, and the Court was about to add, Jose Maria Martin, 'May God have mercy on your soul,' but the Court will not assume the responsibility to asking an Allwise Providence to do that which a jury of your peers has refused to do. The Lord will not have mercy on your soul!

However, if you affect any religious belief, or are connected with any religious organization, it might be well for you to send for your priest or your minister and get from him, —such consolation as you can; but the Court advises you to place no reliance upon anything of that kind!

Mr. Sheriff, remove the prisoner.³

The sequel to the story is that Martin in all probability did see the green grass and beautiful flowers of the spring. He escaped and was never heard of or seen again to answer to the law.

Judge Benedict had little faith in the ability of justices of the peace. In the case of *Sanchez v. Luna*, decided in 1857, he held that a district court may in its discretion grant leave to amend the pleadings on an appeal from the justice of the peace court, if it appears the justice had jurisdiction over the subject matter and the parties. Said he:

The [district] court is to be in no wise trammled in its mode of proceeding by the irregular and untechnical act of the justice of the peace. . . . To forbid the courts this power to amend in this class of cases, . . . would in this country amount to almost a denial of justice through the means of appeals. The justices of the peace are, for the most part, unskilled, if not uninstructed, in legal forms and technical proceedings. The records in appealed causes in the courts manifest how defective and inartificial the business in the precinct tribunals is transacted. The dockets are rare that can exhibit strict regularity. If, where a litigant presents himself before the district bench with his appeal in hand, the court is powerless in granting to the parties the privilege to correct and perfect what unskillfulness or ignorance has defectively done, the result must be that suitors will be turned from the court with heavy bills of costs, and confidence in legal justice be destroyed.⁴

The first opinion written by Kirby Benedict as chief justice answered an important legal question—whether a

3. N. M. Bar Association, *Minutes*, 1890 (Report of Committee on History of Bench and Bar of New Mexico), pp. 56-57.

4. *Sanchez v. Luna*, 1 N. M. 238, at p. 242.

county in this Territory could be sued. Conceding that at common law it could not, Judge Benedict held in *Allen T. Donalson v. San Miguel County* (1 N. M. 263) that a county is a quasi-corporation and that it could sue and be sued by virtue of a territorial statute which extended the legal meaning of the word "person" to include bodies politic and corporate.

In the case of *Leonardo v. Territory*, Judge Benedict in a specially concurring opinion brought out the interesting suggestion that the language in which a law is enacted in New Mexico may have a bearing upon the exact interpretation of the statute. He said:

If there is any discrepancy between the plain and unquestioned meaning of the terms used in the Spanish original and the terms used to express the same meaning in the English translation, the original must prevail. In the interpretation of the law the Mexican people are not to lose the benefit of their laws enacted in their own tongue, because the translation has done injustice, or because those who occupy judicial seats may not be versed in the Spanish idiom.⁵

Many of the early Territorial laws were originally enacted in Spanish.

When the common law followed the Americans into the area ceded by the Treaty of Guadalupe Hidalgo in 1848, it encountered two phases of the law of the West and Southwest which did not yield to its superior force. These two innovations were the doctrine of community property from the Mexican civil law, and the conception of water rights by appropriation to beneficial use which had its beginning in the rules, regulations and customs adopted by the miners during the California gold rush.⁶ These two legal concepts were in striking contrast to the English system of tenure by the entirety and that of riparian rights in water. Because of the nature of this southwest country, its limited rainfall, and the necessity of conducting water from streams considerable distances to irrigate farm land, the invaders quickly

5. *Leonardo v. Territory*, 1 N. M. 291, at p. 299.

6. C. S. Kinney, *Irrigation & Water Rights*, 2d ed. (San Francisco, 1912), pp. 1044-5.

recognized the necessity of retaining this law of water appropriation.

Two years before the first water right controversy was decided in California (1855) a great litigation appeared upon the civil docket of the third judicial district of New Mexico in Valencia county before Judge Benedict. The water right in dispute was centuries old and had been a matter of bitter feeling between the Acoma and Laguna pueblos for two hundred years or more.⁷ The suit was hard fought; every trick of the law was put in use and not until 1857 was a settlement reached which disposed of the dispute by an agreement between the parties. The lawyers who tried the case were, of course, trained in the common law, but they skillfully adapted its forms to enforcement of a right not known to the common law system. The attorney for the plaintiff was Spruce M. Baird, later a Territorial attorney general, whose pleading in the case was designated as a "bill to quiet title," a remedy ordinarily used to determine title to land. Since, however, this pleading was well adapted to the matter in hand, water rights when appurtenant to land have since been treated as a special form of real estate.

The Acoma attorney in setting forth his allegations recited the importance of settling all the questions between the Pueblo of Acoma and the Pueblo of Laguna touching the boundaries of their lands and the water of the streams to avoid the multiplicity of suits that would necessarily grow out of these questions if they were not settled in a court of equity. To illustrate what he meant he filed thirteen separate suits against members of the Laguna tribe and against the Rev. Samuel Gorman, Baptist minister of the Laguna mission.

Judge Watts as attorney for the defendant Laguna pueblo disputed Acoma's claim of earlier title to the water, setting up the contention that the Laguna claim ante-dated that of the Acomas by three days! He further pleaded

7. Edward Tittmann, "The First Irrigation Lawsuit," *NEW MEXICO HISTORICAL REVIEW*, vol. 2. pp. 363-368.

non-user and abandonment of the water rights on the part of the Acomas.

The case was settled on July 6, 1857, when the attorneys for both sides filed a memorandum in court awarding to Acoma all the irrigable lands down to the Cañada de la Cruz, on the Gallo or Cock Creek, thus preventing the use of its waters to the Lagunas except as to any surplus which might run below that point—a clear cut victory for Acoma.

Land grant controversies have played a major role in New Mexico judicial history, resulting in the eventual establishment of a Court of Private Land Claims.⁸ Kirby Benedict, however, appears to have been the first of the Territorial Supreme Court judges who was called upon to write an opinion in a land grant controversy.⁹

Suit was brought by plaintiffs Justo Pino and others to eject Alexander Hatch from a block of territory in San Miguel county which had been granted, as plaintiffs claimed, to Juan Esteban Pino, father of Justo and Manuel Pino. To show the authenticity of the grant, they offered in evidence a document purporting to have been executed to their father by Bartolome Baca, political chief *pro tempore* of the province of New Mexico on Dec. 23, 1823. With it also was offered Juan's petition to Baca, requesting the grant. The lower court had excluded these documents from evidence and as a result the Pinos lost their case and appealed.

Judge Benedict concluded that a political chief (*Jefe politico*) such as Baca had no power after Mexico's separation from Spain, without express authority from the Mexican government having first been received, and hence could not give away any part of the public domain. It meant that the Pinos' claim could not prevail upon such evidence, although Judge Benedict did point out that it could nevertheless be used in evidence against one having no better right.

Judge Perry A. Brocchus did not agree with Judge Benedict in this conclusion and wrote a dissenting opinion in which he said that a grant of a part of the public domain

8. March 3, 1891. See 26 U. S. Stats. at Large 854.

9. *Pino v. Hatch*, 1 N. M. 125.

executed by a political chief in 1823 upon a petition of the grantee, reciting the fact that it had been made pursuant to legal authority, must be presumed to have been duly authorized and to be valid, particularly since such grant and possession under it had remained without objection from the United States government for twenty-five years. He further relied upon the Treaty of Guadalupe Hidalgo and its provisions protecting Mexican grants in New Mexico.

The stories and anecdotes told about Kirby Benedict are numerous. At one time, it is related, Judge Benedict was holding court in the old Exchange hotel at Las Vegas. Within this hotel also were some of the most notorious gambling rooms in northern New Mexico. In making his charge to the grand jury, Judge Benedict made a particular point of covering the subject of gambling, giving a most definite and specific charge to investigate fully all cases of gambling brought before it. Soon after the grand jury began its work rumors became prevalent that every lawyer in attendance at that term of court was to be indicted for gambling, including the Hon. Thomas B. Catron.

Catron resolved to fight the indictment, should it come, from start to finish and with all the legal tenacity and ability at his command. Having heard that Judge Benedict himself was not adverse to playing a little poker now and then, Catron made an informal investigation to see if the fact could be substantiated. On finding that it could be, he cleverly engineered an indictment for gambling against the Judge himself.

The grand jury, as expected, brought in a large number of true bills, most of them for gambling. One by one the lawyers were brought in. They pleaded guilty, for the most part, as the easiest way out, and were in each case assessed a \$50 fine and costs. Finally the sheriff called, "Kirby Benedict, for gambling." The judge stood up, said in a loud voice, "Kirby Benedict enters a plea of guilty and the court assesses his fine at \$50 and costs; and what is more, Kirby Benedict will pay it." That settled the matter

and Mr. Catron saw no way out of making payment of his fine.¹⁰

Judge Benedict was particularly fond of the so-called game of "draw." He had an unfortunate habit of borrowing money from others while playing the game. Once while holding court in Las Vegas he sat in a game in which a man by the name of Richard Kitchen held a hand and in a short while the judge began borrowing from him. Kitchen happened to be on the petit jury at the time and the next morning when court opened, the jury was called and Kitchen was found absent when his name was called. Benedict directed that a fine of ten dollars be entered against him. By and by Kitchen meandered into the court room and the judge informed him of his fine. "Dick" responded, "That's all right, your honor," and took his seat, wrote a note and passed it up to the judge. Benedict took out his glasses, read the note, and immediately announced: "Your excuse, Mr. Kitchen, is satisfactory. Mr. Clerk, the fine against Mr. Kitchen is remitted." There was a good deal of curiosity to know what Kitchen had written and after court the lawyers gathered around Kitchen to draw him out. He said he didn't write much, only a line. Upon being pressed he elucidated that it said, "Pay me the money you borrowed of me last night and I will settle the fine."

As presiding judge of the first judicial district, Judge Benedict looked seriously upon his obligations. One of the best illustrations of his conscientiousness in discharging the responsibilities of his position was the regularity with which he held court in every county throughout his area. The *New Mexican* took pains to call attention to Judge Benedict's discharge of duty when it observed:

The people of this district may congratulate themselves in possessing as efficient a judge as they now have in the person of Chief Justice Benedict. While in other districts term after term has passed and no courts been held, to the great detriment of parties who had causes to be tried and determined, Judge Benedict has always been at his

10. Miguel A. Otero, *My Life on the Frontier, 1864-1882* (New York, Press of the Pioneers), 1935, p. 160.

post and held every term, as provided by law, in every county in his large district, besides not unfrequently [infrequently] holding terms in other districts for absent judges.¹¹

Even in the second or Albuquerque district numerous terms of court were missed during the early sixties. In April, 1865, newspaper accounts reported that with one or two exceptions no courts had been held in the two southern districts for seven years! No wonder that complaints were registered with the authorities in Washington that a large amount of business had accumulated which remained unsettled to the detriment and annoyance of the parties.

Not least among the difficulties with which the Territorial Supreme Court contended from the days of the provisional courts under General Kearny had been the perpetual interference, both feigned and actual, of the military authorities. Perhaps, at no time, however, did the tension between the civil judiciary and the military authorities become as acute as it did during the administration of Brigadier General James H. Carleton whose iron hand was felt throughout the Territory.

Judge Benedict took considerable interest in journalism and for a time was either the owner of, or at least substantially interested in, the *Santa Fe New Mexican*. After the Confederates, led by General Sibley, had fled New Mexico, Brigadier General James H. Carleton took over in Santa Fe in 1862 and soon became owner of a rival newspaper, the *Santa Fe Gazette*.

Judge Benedict, through his paper, made some charges of graft against the general and prominent officers in his command, as well as accusations of unsatisfactory management of military affairs in the Territory. As a result of this criticism, a movement was set under way to secure removal of Judge Benedict as chief justice. Complaints were formulated declaring his unfitness for the bench. Unfortunately, Benedict, who always had been fond of the little brown jug, gradually became more and more addicted to the use of

11. *Santa Fe (Weekly) New Mexican*, Aug. 19, 1864.

intoxicants and this played into his opponents' hands who made it the principal basis for the charges preferred against him. These were then forwarded to Washington and presented to the president by New Mexico's delegate in Congress and a number of influential officers in the army. The president, after reviewing these charges, said:

Well, gentlemen, I know Benedict. We have been friends for over thirty years. He may imbibe to excess, but Benedict drunk knows more law than all the others on the bench in New Mexico sober. I shall not disturb him.¹²

This was indeed sobering news for Benedict's adversaries and as long as Lincoln remained in the White House no amount of criticism and intrigue could change the president's mind. The bitterness of the attacks levelled against Benedict by his political opponents, however, did not cease while he remained on the bench. Not the least of these critics was James L. Collins, the editor of Carleton's *Santa Fe Gazette*. Typical of Collins' invectives against the chief justice is the following:

Upon completing the fall trip of his political machine, which he calls a court, [Chief Justice Benedict] has returned to the city and through his organ has given Chief Justice Benedict another of those semi-annual editorial puffs which to Chief Justice Benedict are so delightful, and to write which does give Chief Justice Benedict so much pleasure. Chief Justice Benedict in the estimation of Chief Justice Benedict is one of the most remarkable men of the age, that is if we are to believe what he says in his editorials about Chief Justice Benedict. . . .

He must dabble, dabble, dabble in the dirty pool of politics, which he himself stirs up and from which he constantly bespatters himself with mire the most filthy.¹³

These vituperative attacks can not be taken, of course, as representative of the public opinion of the time. Political prejudice, business competition and a clash of personalities were responsible for the tirades. Judge Benedict was leader of the then dominant political party in the Territory. Bene-

12. Twitchell, *Old Santa Fe*, p. 3b1.

13. *Ibid.*, p. 354.

dict numbered as his friends most of the powerful and best men of the Territory. Though his personal habits were deplored, yet they did not appear shocking then, what with the free and easy conditions surrounding life on the frontier.

Serious as Judge Benedict's conflicts were with the military authorities, they still did not compare with the troubles of Associate Justice J. G. Knapp of the third judicial district. His conflicts extended from every military station and sub-depot from Santa Fe to the border.

The situation reached its peak of intensity in 1864 and 1865. Judge Knapp openly charged that "this Territory is under a military despotism," and that "the civil courts are embarrassed by the military." Carleton communicated with the Attorney General of the United States bitterly denouncing the judge and leveling serious charges against his judicial conduct. Judge Knapp quickly retorted with an open letter addressed to Carleton, saying

You deceived that officer [the Attorney General] into the belief that I made complaints against you for acts which you had not been guilty of, and thereby you have done another thing which you intended, you have injured my character and reputation with the administration at Washington.¹⁴

In backing up his charge that the military had interfered with the administration of justice by civil authorities, numerous instances were cited by Judge Knapp which were later substantiated when General Carleton was removed from his New Mexico command. Among the instances brought out was the fact that in January, 1863, during the session of the Supreme Court, Judge Knapp had been arrested by the military without explanation while the Court was in session and had been placed in the guard house in Santa Fe.¹⁵ In August that same year Judge Knapp was held for three days in the guard house at Las Cruces for "no offense or cause except to gratify the personal spite of one of your [Carleton's] subordinates."¹⁶ While on his way to Santa Fe in November, 1863, Judge Knapp was taken from

14. *Weekly New Mexican*, Jan. 13, 1865.

15. *New Mexican*, Jan. 13, 1865.

16. *Ibid.*

the stage in which he had engaged passage and as a result the term of the Supreme Court failed completely for lack of quorum. The military refused to permit him to leave his residence in the south to come to Santa Fe without first asking permission from Carleton's command to do so. To gain such permission he was required to travel fifty miles to Franklin, Texas, and back again to procure a passport. Failure to do so subjected him to liability for arrest for non-compliance. On one occasion the judge proceeded to travel without pass and was promptly intercepted and halted at Las Cruces. Even with his passport the judge was required to report at every military post between Mesilla and the capital, and at Santa Fe itself, immediately upon arrival. Failure to do so immediately subjected him to prompt incarceration in the guard house by any provost sergeant along the way. Once, in Albuquerque, hot and sticky from a long day's travel on the stage from the south, the judge took time out to wash up and change clothing before reporting, and was threatened with imprisonment.

Few men dared openly to defy the wrath and force of the military, but Judge Knapp unhesitatingly expressed his resentment toward this military domination. In July, 1865, the judge refused to sit and hear cases at the July term of the Supreme Court because he was reluctant to carry out the arbitrary orders of Brigadier General Carleton. He had, for the same reason, refused to hold a term of the district court at Mesilla in November, 1864. This course on the part of Judge Knapp, no doubt, was fully justified.

Carleton was responsible on February 25, 1864, for threatening a deputy United States marshal with death if he attempted to serve a writ of replevin issued by the district court over which Judge Knapp presided. In June, 1864, a military force was ordered out to prevent a United States marshal from entering a judgment by the court. On another occasion one Rafael Martinez was ordered tried by a military commission for an offense after he had been released on bond for trial before the district court, and was tried before a military tribunal instead.

To his letter addressed to General Carleton, heretofore mentioned, Judge Knapp appended this defiant note:

I shall send this letter and any reply you may see fit to make, to the President of the United States, the Secretary of War and the Attorney General and shall make such other use of it as I please. I shall insist that unless you do deny the statement of facts here made, that you be held as confessing their truth; and that you are the very man who does what you ask others to deny for you, and which you do not dare deny for yourself while the record of your acts remains in existence. If you do attempt to deny them, I am prepared to prove them all, and thus establish the fact that you are unworthy of your present position under the government of the United States, and of the society and companionship of honorable men.¹⁷

Judge Knapp's attitude toward the military, together with the fact that Judge Brocchus who had been reappointed had not returned to New Mexico, left Judge Benedict virtually the sole civilian judicial officer in the Territory. His, indeed, were the only Supreme Court decisions reported after the January term, 1862, until January, 1867. This situation caused the *Arizona Miner* to observe:

Chief Justice Benedict is doing all the judicial labor in New Mexico as usual. We do not wonder that he complains of such inefficient associates as Brocchus and Knapp—the one ever absent from his post, and the other constantly on the rampage. Knapp reminds us of the fellow of whom Dr. Johnson said—"if he had two ideas in his head, they would fall out with each other."¹⁸

Judge Knapp's clash with Brigadier General Carleton, to be sure, was generated largely by personal animosities between the two gentlemen and between their immediate friends and followers. Carleton's interference with the civilian administration of justice in Judge Knapp's district was counter-balanced by the judge's inter-meddling in Carleton's affairs. The general had proposed an elaborate plan for the resettlement of the beaten Navaho and Apache Indians at the Bosque Redondo on the Pecos. Carleton's major responsibility in New Mexico was subjugation of the marauding and murderous bands of these Indians who had been

17. *New Mexican*, Jan. 13, 1865.

18. *New Mexican*, June 17, 1864.

massacring white men across the Territory. This was fundamentally a military matter, but Judge Knapp lashed forth at Carleton's plan and left no loose stones unturned to upset the military leader's program.

A petition by members of the Doña Ana County grand jury on June 10, 1864, though undoubtedly influenced by Judge Knapp's hostility toward the military, reflected General Carleton's unpopularity in the southern district whose citizens were being treated by the military commander as representatives of a conquered enemy province. It said:

We do now thus solemnly protest in the sacred name of liberty, of right and of justice, and demand that the military shall restore to us all our rights, immunities and privileges guaranteed to us by the Constitution and laws of the United States, and by the bill of rights of New Mexico. . . . Instead of being protected in the rights thus secured to us, General Carleton, through his subordinates, has imprisoned citizens, has fined and compelled them to submit to the performance of labor without conviction or trial; has taken away our property without just compensation and refused to restore it. . . . Setting up courts of his own, . . . [he] has prevented the courts established by law from discharging their duty. . . .¹⁹

On September 19, 1866, Carleton was removed from his command, due in large measure to his inability to work in proper harmony with the civil administration in New Mexico. This, however, was not until Judge Knapp himself had left the court.

Assassination of President Lincoln, too, sounded a death knell for Chief Justice Benedict's tenure on the bench. Early in February, 1866, Judge Benedict was removed. The imprint left by his court's feud with the military at a time when a victorious Union army was riding the crest of popularity throughout the country, coupled no doubt with a renewal of charges regarding the judge's intemperance, as well as Judge Benedict's personal friendship with the then chief justice of the United States, Salmon P. Chase, were Benedict's undoing. Seeking to reward the heroes of the Union army, President Johnson named Brigadier General

19. *New Mexican*, July 1, 1864.

John P. Slough, who was known throughout New Mexico for his gallantry in resisting the invading Texans, as Judge Benedict's successor.

Loss of the position was a profound shock to the judge and it caused him to become very irritable and morose. Taking up the general practice of law, Benedict soon exhibited personal habits which brought him into difficulties with the presiding judges.

At one time Judge Benedict, in presenting a motion before Judge Sydney Hubbell in Albuquerque, seemingly made a remark reflecting upon the intelligence of the court. "Sit down," admonished Hubbell, "you are drunk." "That is true," retorted the lubricated Benedict, "I am surprised that your honor is enabled to make so correct a decision."²⁰

On another occasion Judge Benedict was arguing a motion before Judge Brocchus at Socorro. Judge Brocchus was a bit hard of hearing but a man of elegant manners and a thorough believer in decorum in the court room. Benedict's motion was on a matter of relatively small importance, but in his argument the ex-judge worked himself up to a frenzy, sawed the air with his arms, spoke in an unpleasantly loud voice and banged upon the table with all his might. Judge Brocchus became nervous and stopped him, suggesting in the most courteous manner at his command, that it was unpleasant to the court to watch Mr. Benedict perform in this fashion. Benedict apologetically explained that in the heat of his argument and in his zeal for his client he quite forgot. He resumed his argument, somewhat subdued at first, but was soon yelling at the top of his vocal cords, hammering the table and churning the ozone. The court stopped him again, repeating his former remarks. Benedict did likewise, resumed the argument and soon was making a dreadful noise. Judge Brocchus hereupon ordered the sheriff to adjourn court. The judge then stepped down from the bench, grabbed Benedict by the collar and proceeded to administer a good thrashing. Judge Benedict apologized. Court reopened, and this time Benedict completed his argument

20. Twitchell, *Old Santa Fe*, pp. 356-357.

upon the motion in an altogether dignified and courteous manner.²¹

In January, 1871, at a session of the Supreme Court, when the Hon. Joseph G. Palen was serving as chief justice, new rules of practice for the Supreme Court and for the district courts were adopted. One of these required the attorneys to file briefs upon points of law relied upon by them for reversal or approval and to give citations of authorities. The rule further provided that if this was not done counsel would not be heard. One day Judge Benedict, restive under these new requirements, rose to argue a case in which he was counsel for the appellant. When the court called for his brief it was discovered that none had been filed. Judge Benedict protested that he had not understood the requirement. The rule was read to him and the case postponed to give him an opportunity to comply. Benedict subsequently filed what he said was his brief. His statement of facts read as follows: "The facts of this case will be found upon the record." Next he stated his first point. "Vide, U. S. Statutes at Large" was his citation of authority. (There were thirteen volumes of the Statutes at Large at the time.) To his second point his citation was "Vide, Phillips, Starkie and Greenleaf on Evidence."²²

The court informed Judge Benedict that it was sorry but that his so-called brief did not meet the requirements of the rule and gave him additional time to perfect it. He later brought it into court, unimproved, whereupon the court announced that he would not be heard, and directed opposing counsel, Mr. Charles P. Clever, an intimate friend of Judge Benedict, to proceed with the case. Mr. Clever went ahead with his argument and Judge Benedict sat by, commenting, growling and cursing. The court repeatedly called Benedict to order and finally directed that a rule be entered upon him to show cause why he should not be suspended or otherwise punished for his misconduct. His answer to the rule further

21. N. M. Bar Association, "Report of Committee on Legal Biography," *Proceedings*, 1890, p. 54.

22. *Ibid.*, p. 53.

aggravated his offense, for instead of attempting an apology, he very bitterly assailed and vilified the court. He was thereupon suspended from practice in the Supreme and district courts until further order of the court.

At the next succeeding session of the tribunal, Benedict unceremoniously walked into the court room and without offering any apology whatsoever demanded his restoration to practice. The court ignored him. At the following term Benedict again sought reinstatement as a matter of course and of right. Again no attention was paid to him. Finally, the third time, he came into court with an apology for his conduct, together with an attempted explanation and a request that he be restored to practice. The court thereupon made an order referring the matter to ex-Judges Hubbell, Houghton and Mr. William Breeden, as a committee to ascertain and report back to the court whether in their judgment Benedict's habits and character were such as to make him a fit person to practice in the courts. To Benedict this was the last straw. He withdrew his application and thereby probably spared the committee an unpleasant task.

Judge Benedict tried one other move to regain admission to the bar—an appeal to his friends in the Territorial legislature. Accordingly, early in 1872, the legislature passed a bill to allow the Hon. Kirby Benedict to practice law in the courts of the Territory. The act, however, never became effective; it was recalled and reconsidered by the house of representatives, then by unanimous vote tabled indefinitely.

In 1874 Judge Benedict died of a heart attack, survived by a widow and two children.

JAMES A. BENNETT: A DRAGOON IN NEW MEXICO,
1850-1856

(Continued)

Edited by CLINTON E. BROOKS *and* FRANK D. REEVE

August 12, 1853.—Lieut. John Wynn Davidson⁸⁵ joined the company. His wife came with him. She is a very beautiful St. Louis lady.

Sept. 7.—Been in company with Serg't. Holbrook and 50 men in the mountains through the finest kind of country. Passed the grave of an old soldier who was killed by Indians in 1849 and was buried by his companions. The funeral service was the short eulogy by Major Grier, "Here lies the remains of a good soldier." We returned home by way of Rayado, having been absent 20 days.

Oct. 1.—Numerous Apache⁸⁶ Indians were at the fort today. Indians have been here every day recently. We have had to keep watch of all loose property for fear of losing it. One took a great fancy to me. I gave him an old bowie knife. He said he should remember me as a friend.

Went to town, Taos, today. Heard that a Navajo Indian came into Fort Defiance a few days since, and asked a soldier for a piece of tobacco. The soldier told him that he had none. The Indian shot the soldier dead. The other Indians brought the murderer in and gave him up to the military authorities. The Navajo Indian was hung by the soldiery.

Oct. 27.—An old cow belonging to a Mexican was taken and killed by the Indians near Las Vegas. A few days ago, one of the tribe came into that place and was shot by the owner of the cow. The Indians again came into Las Vegas. They learned that one of their tribe was killed a few days before by a Mexican. They left town, swearing vengeance.

85. John Wynn Davidson entered the service as 2nd Lieut., 1st Dragoons, July 1, 1845. He was in command at the battle of Cieneguilla. (See footnote 100)

86. These were no doubt the Jicarilla Apache who roamed over northern New Mexico. They were placed on a reservation about 1878. Reeve, "Federal Indian Policy in New Mexico, 1858-1880," N. M. H. R., XIII, 50-62, 168-191.

News came yesterday that several hundred head of cattle were taken and 2 men killed near Las Vegas. Today 30 men of Company H, 1st Dragoons, left in pursuit.

Nov. 22.—The troops just returned to Fort Union. They have had a hard fight with the Indians and killed a number of them. Among those killed was the Chief of the Jicarilla Apaches, Old Lobo, who has boasted that he has had intercourse with Mrs. White.⁸⁷ Although Old Lobo was pierced by seven bullets, he drew his bow and killed a young man named Arnold. They both fell and died grappled in each other's arms. Two soldiers were killed and 3 were wounded. The Indians lost 9 or 10 and fled. The troops captured all their stock.

Dec. 17.—Capt. Sykes, Lieuts. Bell and Maxwell,⁸⁸ left with 130 men from Fort Union in pursuit of Indians on December 5th. Today Lieut. Maxwell with 4 men was riding "advance" one half mile from the main party. The Indians waited in ambush and shot him with 8 arrows. He fell mortally wounded and the 4 men also were wounded but only one mortally. Capt. Sykes was in sight and was threatening men who would dare to go to his rescue. Shame! The party returned to Fort Union with the soldiers very indignant in regard to the conduct of Capt. Sykes.⁸⁹

Jan. 1, 1854.—Commences another year which sees my finish in the army. We had a great dinner, jolly time, and dance at the Rancho de Taos.

Jan. 8.—My 24th birthday arrived. This evening in coming up the cañon from town I was faced by 3 large white mountain wolves who wanted to either make a meal of me or my pony. I fired my pistol at one and pelted the others with rocks. Came off victorious but badly frightened, however.

Jan. 12.—Tuesday started for Santa Fe for the United

87. See footnote 31.

88. David Bell was commissioned 2nd Lieut., 2nd Dragoons, July 1, 1851.

Joseph Edward Maxwell was commissioned 2nd Lieut., Third Infantry, July 1, 1850. He was killed by Apaches near Fort Union, June 30, 1854.

89. George Sykes was commissioned 2nd Lieut., Third Infantry, July 1, 1842, and Captain on September 30, 1855.

States Mail. Travelled alone over the mountains for 75 miles. Snow was very deep. Ice covered the path. Wind howled through the pines. It was lonely travelling. Arrived yesterday at Santa Fe. Last night I went to the Exchange where gambling was going on at a great rate. In one half hour I saw at least \$700,000 lost and won.

Again went to Exchange. F. X. Aubrey, the celebrated trader and express rider, rode up to the door and came in. He was met by Richard H. Weightman who invited Aubrey to drink with him. While drinking, Aubrey asked Weightman, "What has become of the paper you formerly published?" "It died a natural death," was the reply. Aubrey said, "It ought to." Weightman dashed his glass of liquor in the face of Aubrey who drew his pistol and, when in the act of firing, a third person knocked up the muzzle of the pistol and the ball passed through the roof. Weightman drew his bowie knife, rushed in, and stabbed Aubrey to the heart. He died in a few moments.⁹⁰

It was said that Weightman was expelled from West Point for using a bowie knife on a comrade.

Jan. 15.—Mail came in from the States, Friday. Started for Taos via San Juan where an American, Mr. Clark, lives. I put up at his house last night. Arrived Cantonment Burgwin, Taos, today.

Jan. 21.—Started yesterday with Major Cunningham, Army Paymaster, en route for Fort Massachusetts to pay off the troops. Camped at Arroyo Hondo. It is tremendously cold. Today the road over the mountains was covered

90. It is interesting that Bennett was another eye-witness to this incident, but it occurred August 18, 1854, or more likely a few days later. The story, secured from an eye-witness, is related in William R. Bernard, "Westport and the Santa Fe Trade," *Transactions of the Kansas State Historical Society*, 1905-1906, vol. ix, 552 (Topeka, 1906). A second eye-witness account is in Ralph Emerson Twitchell, *Old Santa Fe*, p. 346 [1925]. A third account in Benjamin M. Read, *Illustrated History of New Mexico* [1912], p. 645, is the least reliable. Bennett offers the only explanation of how Aubrey's shot hit the ceiling, which lends weight to his claim to being an eyewitness; on the other hand, he is in error about the date, and very likely wrong about the location of the fight.

A recent summary of this episode can be found in Floyd B. Streeter, *Prairie Trails and Cow Towns* (Chapman and Grimes, Boston, 1926), C. E. B.

Richard Hansen Weightman was elected Captain, Battery A, Missouri Light Artillery, Army of the West under Kearny. He was discharged August 1, 1849.

with smooth ice. The mules could not stand or draw the wagons. We were obliged to unload the wagons, carry everything up the hill and draw the empty wagons up the slope by ropes. Camped at Red River.

Jan. 24.—Camped at Costilla⁹¹ where a new town is springing up and again at Colevira⁹² which is a very serpentine stream as its name would indicate. There is no settlement upon it. Arrived at Fort Massachusetts. Three companies of soldiers are here in the snow and icy hills. The troops were paid off and now about 80 drunken men are staggering about the grounds.

Jan. 27.—Yesterday started for home. Cold northeast wind and snow made bad travelling so camped on the Colevira and again at Red River. Glad to find shelters from the storm. One wagon while descending the mountains got the start of us and went tumbling down the hill. It was literally smashed to pieces.

Jan. 30.—Last night camped at Taos where I went to a dance. A fight occurred. An American shot one Mexican dead and wounded 2 others. Arrived home. Comfortable fires and good quarters are much appreciated.

Feb. 4.—Accompanied the paymaster to his home. Camped at Picirise⁹³ and Las Rincones, two Indian towns, and at San Juan. I was quite unwell at Mr. Clark's house. Arrived at Santa Fe. At night I went to a fandango. An Army officer came in with his mistress by whom he has two children. The officer has a wife and family in the States. What do men think of themselves, and she, the woman, knowing to the fact?

Feb. 5.—Camped at Pehocke,⁹⁴ an Indian town. The descendants of Montezuma live here. They have been burning the "eternal fire" of which history speaks. They have a legend among them that they formerly lived at a place now

91. Costilla is located on Costilla creek just south of the Colorado boundary.

92. Colevira may be the stream marked on early maps as Culebra, meaning snake; it flows westward into the Rio Grande north of Costilla creek.

93. Properly spelled Picuris. It lies west of south from Taos in the Sangre de Cristo mountains.

94. Properly spelled Pojuaque, it is about fifteen miles north of Santa Fe. Bennett is now returning to Cantonment Burgwin.

in ruins, called Pecos. A serpent with seven heads came among them and a virgin of their tribe had to be sacrificed every few days to appease his wrath. For which reason the tribe nearly became extinct and had to abandon their homes. This is the same tale that the Mexican told me at Rio Pecos on August 5, 1851.

Feb. 8.—Encamped at La Joya Arriba⁹⁵ and in the mountains near Embudo before reaching home today. There is “no place like home” for good fires and comfortable quarters.

Feb. 17.—Started for Rayado. Night came on and found me in the midst of the mountains. Snow was piled on piles. Still snowing and a cold wind was blowing furiously. Tied my horse to a tree, built a fire, and lay down. At dark a large body of wolves came around and set up a dismal howling. I could see their eyes glisten in the dark. They came so near as to snap at my horse’s heels. I suppose the fire was all that kept them away from me. A pleasant situation: I had nothing to eat; surrounded by wolves; bound in by snow; and to make the matter worse, my horse broke loose. It was so dark I could not find him. At last morning came but not the horse. By diligent searching and carrying my saddle, I found the horse at about 11 o’clock. At that time I mounted and went on. Found my road. Arrived at Rayado.

Feb. 19.—At Kit Carson’s house last night. He related to me numerous adventures and hair breadth escapes he had had. He is small-sized with blue eyes and sandy hair but has a heart of the first magnitude. He is ever ready to sacrifice his all for a friend in need and his name is a terror to the Indians. Last year he drove 6500 sheep over the mountains to California. He is now the Indian Agent for the United States in New Mexico. He was a hunter at Bent’s Fort from 1833 to 1841 and later guided Fremont across the plains and over the Rocky Mountains. He told me of the time that Godey and he put to flight 30 Indians who had

95. La Joya is in the narrow canyon of the Rio Grande on the road to Taos.

killed some Mexicans and stolen the two women in the camp. One husband escaped with the horses and found Col. Fremont's camp but not before the Indians had captured most of the horses which they had followed. Godey and Carson followed the trail, charged the Indian camp at full speed. The Indians naturally thought more men were following these two so they fled, leaving 3 of their number dead. Space doesn't permit me to tell all that Kit told me.⁹⁶ Returned home very sick from something I ate.

March 1.—Just recovered from quite a sickness.

March 6.—In company with Lieut. Davidson and 60 men, started to watch the movements of a party of Apache Indians. Met 150 Indians. Talked with them. The chiefs agreed to come into our Fort and treat (or make a treaty) when we returned. Arrived at Mora.

March 7.—Lieut. Davidson went to Fort Union to report to Col. Cooke.⁹⁷ Spent the day in town. At night a dance took place. A man of Company F, 1st Dragoons, had difficulty with some Mexicans and got five pistol balls through different parts of his body. He was picked up insensible and sent to Fort Union hospital.

March 9.—Started for home yesterday. At dusk arrived at Picirise where we learned the Indians we met two days ago had gone on to join another tribe instead of going to our fort as they had agreed. We saddled up our horses, started across the mountains, got lost, and scattered. It was the darkest night I ever saw. Men were shouting to each other. Riding under trees, we lost nearly all our hats. The sleet and wind made it a terrible night. This morning at daylight, I got home. The other men came stringing in by ones and twos. 8 o'clock in the morning we started anew, having heard that the Indians were a few miles off. We traced

96. The Godey affair occurred on the Mojave desert during Fremont's return trip from California in the spring of 1844. Godey and Carson attacked the Indians on foot, not on horseback running at full speed, and killed two of them. *Kit Carson's Own Story . . .*, pp. 60 ff. See also Sabin, *Kit Carson . . .* I, 377f.

97. Col. Philip St. George Cooke was commissioned 1st Lieut., 1st Dragoons, in 1833, and Lieut.-Col., 2nd Dragoons, in 1853. He led the Mormon Battalion to California in the War with Mexico.

them to Taos Rancho.⁹⁸ Surrounded the Rancho and found 10 Indians. Took them prisoners to the fort where we held a council. Three chiefs agreed to accompany Major Blake⁹⁹ to Fort Union to conclude a treaty with Col. Cooke.

March 11.—Major Blake with 12 men and the three Indian Chiefs started for Fort Union.

March 29.—Major Blake came galloping into our fort with the news that the Indians would not come to terms but had run away from him. We were, 60 of us, to saddle up immediately and pursue the band to prevent them from crossing the Rio Grande and joining the Chachon band of Apaches. At the same time that Major Blake came in a Mexican also came riding in saying that 1500 head of cattle were driven off by the Indians and two herders were killed. We mounted and left at 11 o'clock that night. Encamped on the banks of the Rio Grande at Cienequilla where there are five mud houses. Heard of Indians.

March 30.—At sunrise this morning, started, found the body of a white man who was killed by the Indians. Followed their trail; found ourselves at 8 o'clock A.M. in ambush, surrounded by about 400 Indians; fought hard until 12 noon when we started to retreat.¹⁰⁰ I was wounded shortly after by a rifle ball through both thighs. I then ran about a mile; found I was not able to walk alone any farther; got between two horses, seized their stirrups. The horses dragged me one half mile when I managed to mount my horse. In riding under low trees I lost my hat. Blood flowed freely. I got weak and such pain I can not describe. At sundown the

98. Three settlements bear the name Taos in the Taos valley, northern New Mexico: The Indian Pueblo of Taos, the Spanish settlement of Taos, and close to the latter on its southern side another Spanish settlement called Rancho de Taos.

For a mid-century description see Lewis H. Garrard, *Wah-To-Yah and the Taos Trail*, ed. Ralph P. Bieber (Glendale, California, The Arthur H. Clark Co., 1938), p. 232, (C. E. B.)

99. Major Blake was commanding officer of Cantonment Burgwin. Sabin, *Kit Carson* . . . , II, 660.

100. Bender is probably in error in describing this fight as a case of an Indian attack on a mail party under escort of Lieut. J. W. Davidson with 60 Dragoons. It was a very severe fight, however. The sixty Dragoons were forced to retreat with twenty-two killed and most of the survivors wounded. For details see Bender, "Frontier Defense . . ." 348ff. James F. Meline, *Two Thousand Miles on Horseback* (New York, 1873), p. 104. *Kit Carson's Own Story* . . . , pp. 106ff.

Indians left us after fighting with us all day. At 11 o'clock arrived at Rancho de Taos. I was taken off my horse having ridden 25 miles after being wounded. I was placed in a wagon; taken to the fort (Cantonment Burgwin); and put to bed in the hospital.

March 31.—The doctor we have here knows nothing. I asked him to extract the ball last night but it was not done until today. The shot struck me in the fleshy part of my left thigh, passing out very low, and entered my right leg, striking the bone and following it around to the fore part of the leg where it lodged about two inches below the groin.

April 15.—Past 16 days have been an age. My leg has swelled and become greatly inflamed. It was supposed I must die. I supposed so also. Today I had the first food I have taken since being wounded.

April 19.—A Sinus (a suppurating tract) has formed in my right leg. The doctor tried to produce supperation (formation of pus) by bandaging but failed. Dr. Byne¹⁰¹ had to perform a very painful operation upon my limb.

April 25.—Believe that I must die. Directed a letter written to my mother to be sent in case I died. Last night Lieut. Davidson left for Santa Fe to find a doctor. We have none here at present.

April 27.—Worse than ever. Doctor came. He says he will have to amputate my leg at the hip joint. I refused. I can never live.¹⁰²

101. There was a Dr. John Byrne, Assistant-Surgeon; and Dr. Bernard M. Byrne, Assistant-Surgeon, May 20, 1836, and Major-Surgeon, March 31, 1853. Governor Lane mentions a Dr. Byrne as army surgeon at Fort Union in 1852; he is identified as Bernard M. Byrne in Ralph P. Bieber, ed., "Letters of William Carr Lane, 1852-1854," N. M. H. R., III, 179-203 (April, 1928).

The first use of chloroform as a general anesthetic was in 1847. It is hardly possible that it was used on the frontier as early as 1854, therefore the patient would be conscious of all pain. (C.E.B.)

102. "It is, therefore, easy to understand why all wounds suppurated. Injuries which today seem comparatively trivial were treated by amputation. . . . In fact, it was a general rule in compound fractures to amputate, and injuries to the larger joints were subjected to this procedure. The reason for such radical measures was that because of supuration the surgeon, usually called from a distance, found amputation the most practical measure. There was no one present to care for the wound. The experience was that if amputation was not done, death from infection would most likely follow, an end not obviated in many cases by amputation, because the wound made by the amputation often became infected and killed the patient." Arthur E.

May 3.—Improving but the days are long and I am downhearted and homesick. I would give all I am worth to see one of my family walk in here today. I lie in bed perfectly helpless, unable to help myself at all. The Indians came quite near the fort just now. We momentarily expect an attack. Few soldiers are here now. What a pleasant situation: to lie in bed, helpless, and expect to be massacred at any moment.

May 11.—Today returned the troops that followed the Indians who cut up our company. They overtook the Indians, fought with them, took from them all their animals, provisions, and camp equipage. Received a letter of inquiry from my sister, Amanda. Answered it immediately.

May 30.—Still on my back, improving very slowly. Think I shall always be lame. Mrs. Davidson has been very kind to me in sending me a great many little niceties which soldiers do not have. Moved to new hospital. Carried in a bed by six men. One wounded man died in the room. He has been a great sufferer. Almost wish I died, too. Today makes two months since I was put in bed. There is nothing left of me but skin and bones.

June 10.—15 of us left alone. The company is following Indians. Got out of bed; sat a few moments; got dizzy; had to go back.

June 13.—Walked a few steps upon crutches.

June 17.—Tried to walk, fell at the door into a puddle of water and hurt my limb. Carried to bed.

June 28.—Got up for the first time since the fall. I must be careful for I am very weak. Company returned, bringing 150 horses and mules captured from the Indians. Brought 4 scalps, too.

July 1.—Company away again. 21 of us here in the fort are surrounded by Indians.

July 4.—Today I walked out upon my crutches about 300 yards from the fort into the bushes. I heard a noise. Supposing it was a deer, I secreted myself. In a few mo-

ments I discovered it was an Indian spy who was crawling through the bushes. When the Indian got within 8 or 10 paces from me, I fired my pistol and struck his neck. He fell but still exhibited signs of life. I fired again and the ball passed directly through his head. I then approached him, cut off his scalp or "took his hair" as some say here, and hobbled to my quarters, bearing my trophy of war. We had a regular war dance around it. The Captain congratulated me on my success as a "lame warrior." Thus I celebrated the anniversary of Independence.

July 25.—Company returned. Did not accomplish much. Left again for Rayado. I was left here in the hospital, not be able to travel.

August 1.—For the first time since wounded, I mounted a mule. Rode to town. Very tired.

August 8.—Quite sick. The doctor says I have the "Varioloid."¹⁰³ The eruption commenced. Feel some better.

August 22.—Once more out of bed after having a very light case of small pox. Guess I'd better go to town now and catch the measles!

August 28.—Started for Rayado to join my company. Left with a train of 10 wagons. Camped last night just outside of Taos in a ravine. A man named Sullivan and another named Dowd are both still suffering from wounds received on March 30th. In company with the teamsters, they got very drunk and insisted on sitting out in the night air, singing, etc. I advised them to go to bed but to no avail. This morning Sullivan has a severe headache and is sick otherwise. Riding all day over rocks and logs is enough to jar the life out of a man. Poor Sullivan is paying dearly for his folly.

Sept. 1.—Arrived at Mora last night. Got some fine melons, green corn, and squash for supper. Went to hospital at Ft. Union today for some medicine for Sullivan and me.

103. Varioloid: "A modified mild form of small pox, or variola, occurring in persons who have been vaccinated or had small pox."

Sept. 3.—Last night camped on Ocate. No wood is on this stream. Cooked a little meat and made coffee over a fire of dry buffalo chips. Sullivan was very sick during the night. I have had to attend him all day as he is delirious. Drove very slowly to Rayado where we sent for the doctor at Fort Union.

Sept. 6.—Doctor came. Sullivan had "Brain Fever." He died from his own folly.

Sept. 17.—Col. T. T. Fauntleroy¹⁰⁴ arrived from the United States Friday with 200 recruits, Companies B. and H, 1st Dragoons; the band belonging to the Regiment; 300 horses; 150 wagons; etc.

The band came out and played today. They were all mounted on black horses. They looked fine and played well. This is the first brass band I have heard since 1850. The first tunes played were "Old Folks At Home" and "Sweet Home."

They go to Fort Union from here sometime next week.

Oct. 5.—Spent last few days packing. Company is going 300 miles south on the Rio Grande to establish a fort to be called Fort Thorn.¹⁰⁵ Camped on the Ocate. It rained all afternoon and evening. Got wet through and slept in wet blankets.

Oct. 8.—Got into Fort Union Friday, feeling bad from effects of the storm. Sent to hospital where I was again appointed Stewart [Steward]. Good situation. Company left today [Sunday]. I don't feel content away from companions, some of whom I have been in company with nearly

104. Thomas Turner Fauntleroy was promoted to the rank of Colonel, 1st Dragoons, July 25, 1850. According to Carson, Fauntleroy arrived in New Mexico in February, 1855, *Kit Carson's Own Story* . . . , p. 118. He became commander of the Department August 25, 1859. Bender, "Frontier Defense . . .," pp. 350, 367.

105. Fort Thorn was established in the upper end of the Mesilla valley on the west side of the Rio Grande near the settlement of Santa Barbara, 85 miles south of Fort Craig and 51 miles north of Fort Fillmore. Bender gives the date as December, 1853. *Ibid.*, 347f. The garrison from Fort Webster "was first located in this spot," in November, 1853. 36 cong., 1 sess., sen. ex. doc. 52, p. 223ff (1035).

It was named in honor of Captain Herman Thorn who lost his life on October 16, 1849, by drowning in the Colorado river. William H. Emory, *Report of the United States and Mexican Boundary Survey* (Washington, 1857), I, 130-131, (C.E.B.)

five years. Busy dealing out medicine. Received letters from home inviting me, yes, urging me, to return.

Nov. 22.—Weather cold. I am afraid I can not cross the plains this fall or winter. This morning I was called to the Commanding Officer's quarters. My discharge was given me.¹⁰⁶ Once more I am free. 5 years of hard toil are finished.

Nov. 24.—At Taos, got my papers cashed. Received \$410.00. Find Uncle Sam does not furnish any provender any more. There is no way to get home and no place to remain here, in Ft. Union.

Nov. 30.—In company with a government team, en route for lower country, stopped at San Jose, a small new place. Wanted change for a five dollar gold piece. Mexicans would not change it as they did not know its value. Corn for mules is \$3.50 per bushel and a bundle of straw is 25 cents.

Dec. 3.—Albuquerque. Remain here for the present. Not far from Los Lunas where some of my acquaintances from Governor's Island are located. \$12 per week for board; 12½ cents per piece for washing; everything else is priced accordingly. Bought a pony for \$45 and a saddle and bridle for \$22.

Dec. 15.—Los Lunas. Entered the army again;¹⁰⁷ now a member of Company G, 1st Regimental Dragoons. 'Twas October, 1850, when I last saw some of the members of this company. 'Twas then I left them to join my old Company I, at Rayado. My former Company are now building Fort Thorn, south of here.

Dec. 28.—80 men of us under command of Captain Richard S. Ewell left fort:¹⁰⁸ last night camped in the moun-

106. "James A. Bronson, Private, enlisted Nov. 22, 1849, at Rochester, N. Y. by Capt. Hamilton for period of 5 years. A Certificate of Discharge was given." Major Wm. N. Grier's *Muster Roll*, Co. I, 1st Dragoons, October 31 to December 31, 1854, (C. E. B.)

107. "Bronson, James H., Enlisted as private 15 Dec., 1854 at Los Lunas by Capt. Ewell; pay due from (re)enlistment; Remarks . . . \$2 per month for former service, discharged from Company I, 1st Dragoons, Nov. 21, 1854, joined Company G, 1st Dragoons, Dec. 15, 1854." Captain Ewell's *Muster Roll*, Co. G, October 31 to December 31, 1854, (C. E. B.). Los Lunas is a settlement about twenty miles south of Albuquerque.

108. Presumably they left Fort Thorn and traveled eastward across the mountains.

tains having travelled 30 miles. In fording the Rio Grande, lost 3 horses and 2 mules by drowning. We lost 2 boxes of ammunition and some provisions also. Camped beside a small salty lake on a plain. Used some ice for cooking. It is very cold and there is little wood here.

Dec. 30.—Yesterday arrived at Anton Chico,¹⁰⁹ a miserable, dirty little town. A guide, named Gleason, who lives here, will accompany us. Spent the day at the town making preparations for the march. A Mexican stole a gun belonging to one of our men last night. Found it with him; tied him up; gave him 50 lashes on the bare back.

Jan. 1, 1855.—Travelled 20 miles yesterday along the Rio Pecos which is a deep, muddy stream with very high banks. Today went 22 more miles and camped in a beautiful walnut grove. Such trees grow only in the richest soils. This is now a very fine country with the stream lined with walnut groves. Passed at least 6000 sheep.

Jan. 4.—Down the river all day yesterday. Found it increasing in size. No more timber to be seen. Today left Rio Pecos and went towards the Sierra Blanca range.¹¹⁰ At dark struck Rio Ruidoso,¹¹¹ a very pretty mountain stream, emptying into Rio Pecos. The banks are covered with walnut trees, grapevines, etc.

Jan. 7.—Up the Ruidoso past three days. Once thought we espied an Indian running in the bushes. Found nothing. Met Capt. Stanton¹¹² with 150 men. Encamped.

Jan. 9.—Left the river, crossed a spur of the mountains,

Captain Richard S. Ewell was commissioned 2nd Lieut., 1st Dragoons, July 1, 1840, and received the permanent grade of Captain August 4, 1849.

109. "Anton Chico is a town of about five hundred inhabitants, situated upon the west bank of the Rio Pecos, built (as all towns in New Mexico are) of 'adobes,' or unburnt blocks of clay, and looks at a distance like many piles of unburnt bricks." Grant Foreman, *Marcy and the Gold Seekers* (Norman: University of Oklahoma Press, 1939), p. 245, (C. E. B.)

110. Sierra Blanca or White Mountains in south-central New Mexico.

111. The Rio Bonito and Rio Ruidoso unite to form the Rio Hondo which flows eastward into the Pecos river. Judging from the direction of travel and distance, the party first touched the stream below the junction point which was at that day called the Rio Bonito or Hondo.

112. Henry Whiting Stanton, commissioned in the 1st Dragoons, July 1, 1842, promoted to captain, July 25, 1853, was killed by Apache Indians, January 19, 1855, in the Sacramento mountains which lie south of the White mountains.

camped at a spring, last night. Found two beef cattle lost by Indians. Woke up this morning. Found the wind had blown away my hat. Looked an hour; found it in a crevice of rock, $\frac{1}{4}$ mile from camp. Horses frightened during the night. Suppose it was Indians.

Jan. 11.—Rio Penasco.¹¹³ Camped under a ledge of rocks forming an excellent barricade. Rested ourselves and our horses.

Jan. 18.—Moved up the river and into the mountains. Very little grass here so on account of our horses and mules we rested today. Camped in a ravine. High rocks are upon both sides. 11 o'clock at night, a dozen rifles cracked and a score of arrows came flying into our camp. The dry grass was set on fire around us. Our horses stampeded, running in all directions. With a great deal of trouble, we got them together. Remained quiet until morning.

Jan. 19.—On the mountain in front of us at daybreak, appeared about 100 warriors. They were dancing around a fire, "halloing," and seemed to be daring us on. We saddled our horses, took no breakfast, mounted in pursuit. The main body of troops moved up the stream and small parties of Dragoons kept charging out after parties of Indians. A running fight was kept up until 4 o'clock when we encamped.

Captain Stanton with 12 men rushed up a deep ravine. The Indians in ambush fired upon him. He fell, a ball having passed through his forehead. One private soldier also was killed. The party turned to retreat. The horse of one man fell wounded. The Indians gathered around him and filled the rider's body with arrows. Those in camp heard the firing, ran to the rescue, met the Indians, had a hard fight of 20 minutes when the red men fled. We picked up the dead and brought them into camp. 2 ponies came running into camp. They were covered with blood, showing that their Indian riders had fallen.

At night, outposts were established $\frac{1}{4}$ mile in each direction from camp. The dead bodies were buried and fires built

113. The party has moved to the south through mountainous country. The Rio Peñasco flows eastward into the Pecos river.

over the graves to obliterate all marks of the burial place. I was just far enough from camp to hear the spade and pick-axe as they struck stones. The night was as dark as "Egypt." I was lying alone upon a blanket, waiting and watching anxiously, the approach of the foe. I heard the noise of something coming very stealthily through the bushes. The dry leaves rattled. My nerves were at their utmost tension when I was pleased to discover the intruder to be a large white mountain wolf, easily frightened off. No Indians were to be seen in the morning.

Jan. 21.—Went up the river. Camped last night at its head. Animals are dying fast, 8 to 12 per day. No one of our number has ever travelled this country before. It is nothing but snow and ice. We travelled less than 4 miles before we camped again.

Jan. 23.—Turned back yesterday. Saw 4 Indians in the distance but they soon disappeared. In crossing a stream we lost nearly all of our packs of provision. Those who couldn't ride became bare-footed and to make matters worse the road was strewn with sharp fragments of rock. The Indians have been burning the grass upon our route.

Came to where we buried Capt. Stanton and the two men. Found the bodies torn from the grave; their blankets stolen; bodies half-eaten by wolves; their eyes picked out by ravens; their bones picked by ravens and turkey-buzzards. Revolting sight. We built a large pile of pine wood; put on bodies; burned the flesh; took the bones away.

Jan. 26.—Down the river [Rio Peñasco] losing animals fast. The Apache¹¹⁴ Indians tried to burn us out of camp last night. Saved ourselves by burning a circle around the camp. Rio Ruidoso again where we parted company with Company B, 1st Dragoons, the Infantry, etc.

We went down the Rio Bonita¹¹⁵ or Pretty River. As its name signifies, it is a beautiful stream.

Jan. 29.—By a small salt lake, travelling on foot. Horses

114. This expedition was in the country inhabited especially by the Mescalero Apache.

115. See footnote 111.

are scarcely able to walk alone. We are to remain here at Pattos,¹¹⁶ a fine spring in the middle of a Juniper grove. 16 horses and 7 mules died on the road today. Here are some old ruins, pieces of pottery, stones for grinding corn, an old burying ground, etc. We have sent for provision and forage for our horses.

Feb. 2.—No mistake about it, we are living on a light diet. Killed our last beef; flour is gone; we have no shoes. It is hard fare. We have decided to call this Camp Starvation.

Feb. 4.—Have been subsisting on horse and mule flesh. No provision came so started on yesterday. Travelled until 10 o'clock at night, driving our wornout animals. We burned a great number of our saddles, not being able to carry them. Camped at "La Gyllina"¹¹⁷ a spring on top of a mountain. This morning 3 wagons with corn and flour came into camp. We are much happier. Travelled across a plain for 20 miles and camped beside a stream called Waha.¹¹⁸

Feb. 6.—Manzano,¹¹⁹ a town where the people are more like Indians than anything else. They gather around with eyes and mouths open to see the soldiers. The Manzano Mountains lie between here and the Rio Grande which is the regular travel route in this region.

Feb. 8.—Crossed the mountains barefoot over sharp rocks and ice. There is nothing to ride. Crossed the Rio Grande and came to Los Lunas where we are all glad to be once more in our quarters, cleaning up and getting new clothing.

Feb. 10.—Started with the remains of Capt. Stanton to go to Fort Fillmore.¹²⁰

Feb. 15.—On the way stopped at the home of an Englishman, Mr. Connor,¹²¹ at Socorro and also at Valverde with

116. There is a Patos Peak on present day maps.

117. Bennett has an ear for the correct Spanish pronunciation of this name, but it is spelled Gallina and means turkey or chicken.

118. Probably the intermittent creek called Abo.

119. A settlement on the southeastern side of the Manzana mountains.

120. Fort Fillmore was established in 1851 about ten miles below Las Cruces in southern New Mexico. Bender, "Frontier Defense . . .," p. 265. Calhoun, *Official Correspondence*, p. 433.

121. "W. J. Conner was Postmaster at Socorro in 1855." United States Official

Company I, 3rd Infantry. Yesterday crossed the Jornada del Muerto (Journey of the Dead).¹²² This is a sandy place where no water is to be had. It is 90 miles in length and is noted for murders and massacres by the Indians. Today overtook the men who parted from us in the mountains. Camped with them at Dona Ana¹²³ which is quite a little town of some 2000 inhabitants. Soldiers had quite a dance.

Feb. 16.—Fort Fillmore, established 1852, is occupied by Company B, 1st Dragoons; Companies C, K, and H, 3rd Infantry. We rode into the fort. Mrs. Stanton, the Captain's wife, stood in the door awaiting her husband. If a person had one drop of pity, here he could use it. Poor woman! She asks for her husband. The answer is evaded. An hour passes. Her smiles are fled. Her merry laugh is turned to sighs, and tears stain her cheek. Him she loved, she never more shall behold.

Feb. 17.—Mounted my horse at 3 o'clock P.M. to carry an express from the Mexican General Santa Anna to Governor Lane¹²⁴ of Santa Fe. Arrived 10 o'clock P.M. at Fort Thorn.

Feb. 19.—Yesterday at daybreak was up and off. 9 o'clock P.M. arrived at Fort Craig,¹²⁵ having ridden without a stop for 108 miles. Never so tired in my life. Took a good rest today. Slept nearly all day.

Feb. 21.—Passed Lamitar,¹²⁶ a very pretty town, where the former Mexican Governor of New Mexico, General

Register, September 30, 1855 (Washington, 1855), p. 395, (C. E. B.). Connor is mentioned in Davis, *El Gringo*, p. 205.

122. The *Jornada del Muerto* is famous in the history of New Mexico as a waterless, dangerous trip, parallel to but east of the Rio Grande. It was about ninety miles long, extending from near Fort Craig to the northern end of the Mesilla valley, near Fort Selden. The journey or route long antedated the above-mentioned forts.

123. Doña Ana was founded in 1843 about five miles north of Las Cruces. Percy M. Baldwin, "A Short History of the Mesilla Valley," N. M. H. R., XIII, 314-324 (July, 1938).

124. Lane arrived in Santa Fe September 9, 1852, and served as governor until August 8, 1853. See Bieber "Letters of William Carr Lane . . ."

125. Fort Craig was established in April, 1854, nine miles south of Fort Conrad (which was abandoned) at the entrance to the *Jornada del Muerto*. Bender, "Frontier Defense . . .," p. 348.

126. Lemitar is about eight miles north of Socorro.

Armijo, lives. At Los Lunas, papers are taken by another. I am to remain with my company.

Feb. 27.—With General John Garland's¹²⁷ escort, consisting of 30 men, General Garland was present and distinguished himself at the storming of El Molino del Rey during the Mexican War. Last night had the usual good fare at Mr. Connor's house. Today at Fort Craig. This is the best and prettiest fort in New Mexico. It is situated on a table land beside the Rio Grande. It is set in a grove of cottonwood trees.

March 3.—Down the Rio Grande past Fort Thorn, a new fort which was built by my old company and is garrisoned with 2 companies of Infantry and 1 of Cavalry [Dragoons]. Last night at Dona Ana. Stayed at Mr. Thompson's¹²⁸ house. He is an American, formerly a soldier, and is now living here. He is married to a Mexican woman. Passed Las Cruces. Camped at Fort Fillmore. Here are found 3 companies of Infantry; 1 of Cavalry; the Colonel commanding the 3rd Infantry; the Staff; and a Brass Band.

March 8.—El Paso, Franklin, and Fort Bliss.¹²⁹ The former is in Old Mexico, the next in New Mexico, and the latter is in Texas. These 3 territories joining here. Spent the last 4 days looking over the sights in El Paso, a city of 10,000 inhabitants. It is a rendezvous for rascals, cut-throats, and knaves. Murders are committed almost nightly in the streets.

Mar. 10.—Dona Ana. A dance took place as usual. Last night 4 Mexicans broke into Mr. Kirtsc's house, demanded

127. John Garland was commissioned 1st Lieut., 35th Infantry, March 31, 1813, and Brig.-Gen. August 20, 1847, for meritorious conduct in the War with Mexico. He became commander of the 9th Military Department, July 20, 1853. Bender, "Frontier Defense . . ." p. 346.

128. P. M. Thompson was a native of New Jersey; he joined Black Hawk's tribe, fought in the War with Mexico, and was discharged in New Mexico. Davis, *El Gringo*, p. 210f.

He was "Postmaster for two quarters at Doña Ana in Bernalillo County during 1855." United States Official Register, p. 395, (C. E. B.)

129. Fort Bliss "was established as Camp Concordia in February, 1848, and was officially changed to Fort Bliss in honor of Lieut.-Col. John Bliss, who entered the Army in 1812 and died in 1854." Charles J. Sullivan, *Army Posts and Towns* (Burlington, Vermont, 1935), pp. 183f, (C. E. B.)

El Paso was the present day Juarez, Mexico; Franklin was the first name for present day El Paso, Texas. Bennett visited the Mexican town.

his money. He informed them that he had none. They tied his hands and feet; searched for his money; found none; seized his wife and before his eyes each of the four villains forced her. This morning 10 of our men went in pursuit of the 4 Mexicans; found them in Las Cruces; brought them back.

Mar. 11.—Last night the 4 Mexicans were taken from the jail by some Americans. This morning they were found hanging from a tree just outside of town. Learned that one of the 4 men hanged last night was the man who killed his sister at Valverde in order to obtain \$4.00 which she had in her pocket.

Mar. 13.—Last night at a spring called San Augustine in the Organ¹³⁰ Mountains. These are an abrupt narrow chain of mountains with high sharp peaks covered with tall pines. Crossed a plain with a salt lake 40 miles in length and from 3 to 5 miles in width at the center. Salt is in such abundance that it lies from 3 to 8 feet deep as far from the shore as 3 miles. Wagons are driven to the shore and loaded with shovels. No other process is necessary to procure salt.

Mar. 15.—Camped last night among a few ash trees beside a nice clear stream at Dog Cañon which is a deep ravine with perpendicular sides about 450 feet in height. A small mountain path, much used by the Apaches, passes up the ravine. Passed a stream styled Senora de la Luz or Lady of the Light. It is a pretty little stream running from the mountain and sinking from sight in the ground. Camped upon another pretty stream in the Sacramento Mountains.¹³¹ It is called Tularosa or Flags. It is very deep but narrow.

Mar. 16.—Crossed the Sacramento and came into the Sierra Blanco range. Camped on a nice spot at the junction of 3 mountain streams.¹³² Saw thousands of wild game: deer, elk, bear, and turkey. Caught some trout.

Mar. 19.—Came upon the Rio Ruidoso and followed it

130. The Organ mountains lie east of Las Cruces in a north-south direction.

131. Dog Cañon is in the southern part of the Sacramento mountains and afforded a refuge for the Indians. From there the party moved northward to La Luz and Tularosa.

132. Short streams unite to form Three rivers on the western side of the White mountains.

down to the junction of Rio Bonita which we followed upstream for 20 miles. Arrived at an encampment of United States Soldiers, 300 men under the command of Lieut. Col. Dixon S. Miles.¹³³ They are here for the purpose of building a fort to be called Fort Stanton in commemoration of the Captain who was killed three months ago. General John Garland selected the site for the fort today. The Officers all got drunk.

Mar. 21.—Killed several turkeys last night at Pattos. This is the old spot which we named Camp Starvation. At Gyllina, found the complete skeleton of an Indian said to have been poisoned two years since by the people of Manzano. 15 men left us at Manzano to go direct to Los Lunas. We go on to Santa Fe.

Mar. 24.—Spent last night upon the plain at Buffalo Spring. This is a dirty, filthy spring with green and stagnant water. Reached Galisteo just at dusk. Men remained here. I went on with General Garland to Santa Fe, arriving at 10 o'clock P. M. Went to bed tired, having ridden 50 miles.

Mar. 25.—The other men came today. Spent the day in town. Last night the Governor of the Territory was hung in effigy to the flag staff in the main plaza. Cause: his course taken with the Indians.¹³⁴

Mar. 28.—Last night spent at Las Algodones where Mr. Gleason, our former guide in the Sierra Blanca range, now lives. Two days ago he had a dispute with a Mexican and shot him. He now has to keep his house closed well at night. Such is justice in this country. After we encamped on the Rio Grande opposite the Indian town of Isleta,¹³⁵ I went

133. Dixon Stansbury Miles was commissioned July 1, 1824, and advanced to Lieut.-Col., 3rd Infantry, April 15, 1851. He was campaigning against the Mescalero Apache in the spring of 1855. Fort Stanton was established on Rio Bonito in May, 1855, and named in honor of Captain Stanton who was killed near there. Bender, "Frontier Defense . . .," pp. 351.

134. David Meriwether served as governor from 1853 to 1857. He negotiated treaties for Indian reservations, but the sites chosen were not popular; they were too close to settlements. See "Notes and Documents," N. M. H. R., XXI, No. 3 (July, 1846). Davis, *El Gringo*, p. 103ff.

135. The Pueblo of Isleta is now on the west bank of the Rio Grande about thirteen miles south of Albuquerque.

across the river in a skiff to buy corn. Saw 3 girls with very white elegant forms and Indian simplicity. They were all of one family and of pure Indian blood but they were the handsomest specimens of humanity I ever beheld.

April 1.—Spent Friday getting ready to go again after being at Los Lunas only overnight. General Garland and Governor David Meriwether, the present Governor of the Territory, arrived yesterday en route for the Navajo Country to make a treaty with the Navajo Indians.

30 of us act as escort with Capt. Bill Ewell in command. Arrived at Rio Peurco [Puerco] which lives up to its name of Dirty River.

April 4.—Spent Monday night in Laguna at a preacher's house. His name is Reed.¹³⁶ Passed Quivera¹³⁷ which is a small town on a single rock, looking as though it would topple and fall at any moment. Camped at Osa or Bear, a little stream which winds along and around a ledge of black lava. The lava bears evident signs of having been melted. Iron is mixed with the rock.

April 6.—Spent last night at a spring where we could not use the water as some mineral gave it a bad taste. Arrived at Fort Defiance, located at Cañon Bonita where 2 companies of Infantry and 1 of Artillery are stationed. Went on to Laguna Niger [Negra] or Black Lake which is 25 miles from the fort. We formed our camp here where the Indians are to meet us.¹³⁸

April 8.—At least 3000 Indians came in and about our camp. They would not come to any reasonable terms. They became offended; left camp about 3 o'clock, P.M. At 11

136. Reverend Henry W. Read arrived in Santa Fe in July, 1849. Reverend Samuel Gorman came to New Mexico in 1852; he located at Laguna and remained there until 1860. Twitchell, *Leading Facts . . .*, II, 350. Davis, *El Gringo*, p. 223f, mentions Gorman, a Baptist missionary, at Laguna in the summer of 1855.

137. The town of Cubero which Bennett has already mentioned. (See footnote 42.) The name was spelled both ways. Davis, *El Gringo*, p. 227.

138. The meeting was held at Laguna Negra to allay Indian suspicion of being assembled too near Fort Defiance, and also to preserve the army grazing ground from Indian stock. Reeve, "Government and the Navaho . . .," N. M. H. R., XIV, 107ff (January, 1939).

P.M., Mr. Dodge,¹³⁹ the Indian Agent, came crawling into our camp and informed us that we were to be attacked at daylight in the morning. Capt. Ewell at once had a man mounted upon a horse and gave him the following instructions: "Go as soon as God will let you, and tell the Commanding Officer at the fort to send me some help or we will all be killed in the morning." At least 1000 little fires were to be seen about us. The first signs of day had just begun to appear when was heard a more welcome sound than music: the rumbling of cannon wheels over the solid rock road. When it was just light the full 75 men of the Artillery Company came charging into our camp. *No attack was made.*

April 9.—At 10 A.M. the Indians commenced slowly to come in. Finally about 2 P.M. the treaty¹⁴⁰ was concluded satisfactorily, and we returned to Fort Defiance.

April 10.—Rained all day. We left the fort; went 20 miles in mud up to our knees; just got well fixed in camp when our horses took fright and ran back towards the fort. 8 of us followed them on foot to the fort where we got them. What a pleasant day: 1st, rode 20 miles in the rain; 2nd, ran 20 miles in the mud; 3rd, rode the same 20 miles bare back with a halter as bridle; 4th, ate neither dinner nor supper; 5th, lay down in the mud with feet to the fire at 3 o'clock in the morning; 6th, started again at 6 o'clock, A.M. to ride 40 miles to the old Hay Camp.

April 13.—In crossing stream, fell in; got a good soaking. What a pleasant life this is! At Los Lunas, had to replenish wardrobe.

April 19.—With Governor Meriwether down the Rio Grande to Socorro where we stayed at Mr. Connor's house. About 10 o'clock P.M. a noise as of distant thunder was heard for 4 or 5 minutes. The earth trembled. Houses shook. Our horses were frightened. It was a shock or an earthquake.¹⁴¹ 2 houses were nearly destroyed.

139. Henry L. Dodge was appointed agent to the Navaho in 1853 and was killed by Apache Indians south of Zuñi, November 19, 1856. *Ibid.*, p. 104.

140. Bennett's chronology is wrong in this Navaho affair. The treaty was concluded July 18, 1855. *Ibid.*, p. 109.

141. "The Rio Grande Valley between Socorro and Albuquerque has had as great

April 23.—Past Fort Craig to Fort Thorn. Indians were waiting for us here. Met in council. I acted as interpreter. 250 Indians made a treaty.¹⁴² Received from them 40 stolen horses, 10 mules, 3 Mexican boys, and a girl. The children were taken by them a few months ago. One of the boys we got from the Apaches tells me that he was with the Indians when we fought them at the time that Capt. Stanton was killed. He says that we killed a chief and 11 or 12 other Indians.

April 25.—Fort Craig. A day or so since a soldier refused to obey the orders of a Corporal. The latter put his authority in force. The soldier drew a knife and tried to stab the Corporal who then shot the soldier through the heart. Today he is being buried without the honors of war while the Corporal receives no blame.

April 28.—Los Lunas. Last night four men of our company were at the mountain 12 miles from here. The Indians came upon them and wounded all of them. News reached us this morning by a Mexican. 30 men followed the Indians. We brought in the wounded men. 3 of these died, one of them having 16 arrow wounds in his body.

May 4.—Left for a long trip with Commissioners to fix the boundary line between the United States and Mexico. Major Wm. H. Emory is the Commanding Officer. President Franklin Pierce has appointed him commissioner and astronomer to fix the boundary under the agreement with Mexico of 1853.

a concentration of earthquakes as any portion of the United States except for the Pacific Coast zone, embracing California and western Nevada, and Helena, Montana region. It may be of interest to note that 542 earthquakes have been recorded in the 75-mile belt along the Rio Grande between Socorro and Albuquerque during the period 1868-1946.

"The earliest earthquake hitherto recorded in New Mexico was one on April 28, 1868, at Socorro. This was formerly regarded as the earliest in the entire Rocky Mountain region (Montana, Idaho, Wyoming, Utah, Colorado, and New Mexico), but it was recently discovered that the Lewis and Clark expedition had reported one in Montana in 1805." Stuart A. Northrop, New Mexico Collaborator in Seismology, U. S. Coast & Geodetic Survey.

142. A treaty was made with the Mescalero at Fort Thorn, June 10, 1855. 35 cong., 1 sess., sen. ex. doc. 11 (919).

May 7.—Passed Berlin¹⁴³ and Polvadera on the Rio Grande. Great vineyard and fruit trees are seen here. At Valverde, men got drunk. I was obliged to tie up 4 of them to keep them quiet.

May 10.—Received a letter from home at Fort Thorn. This fort was named in honor of Capt. Thorn who was drowned in the Colorado River in 1849. Major Emory sent out Dragoons from his camp in California to recover Capt. Thorn's body.

May 12.—While crossing the Rio Grande at San Diego¹⁴⁴ on a ferry boat, lost one man and one horse by drowning. Could not recover the body. Took six men of Company B, 1st Dragoons, from Fort Fillmore, making my company 24 strong.

May 13.—Arrived at Fort Bliss. Reported to Major Wm. Emory.

May 14.—Started. Crossed the river to El Paso where we were joined by a party of Mexicans under their Mexican commissioner to act on behalf of their government. Put up the monument, 15 feet high, which marks the corner between New and Old Mexico, and Texas.¹⁴⁵

May 17.—Yesterday along the river in the Mesilla valley. Today at Rio Mimbres.¹⁴⁶ This is a delightful spot. It is a deep, clear stream. A fine walnut grove, abundant flowers, and a green bed of grass make this an ideal camp.

May 19.—Last night at Cook's Spring which is small, being scarcely sufficient to water our animals. We have 49 horses, 88 mules, and 36 head of beef cattle to feed and water. We now have to make our road as no wagons have ever passed this way.¹⁴⁷ Came to Ojo de Vaca or Cow Spring.

143. The reference must be to Belen, a settlement about thirty miles south of Albuquerque.

144. San Diego was about nine miles north from the southern end of the Jornada del Muerto and was the "old fording place" for the Rio Grande. Bartlett, *Personal Narrative* . . . , I, 215.

145. For the official account of this event see Emory, *Report*, I, 26.

146. The Rio Mimbres flows from north to south and disappears south of Deming, New Mexico.

147. Perhaps wagons had not traversed the exact route this party was taking, but their line of march had been marked out earlier by Colonel Philip St. George Cooke and the Mormon Battalion, and also by John Russell Bartlett, a member of the boun-

May 23.—Past 3 days in Guadalupe Canon. This is very fertile country for Cactus which is the largest I have ever seen. The fruit of the Prickly Pear is as large as a big pear and is very good. Hard business to pick roads for wagons. Once had to dig a road across the stream. Got well wet. Today came on a plain. Killed an old grizzly bear. Too much fat on it to be good food.

May 24.—Arrived at Harnesh,¹⁴⁸ a small place belonging to Mexico. We are the first United States Troops they have ever seen here. They act like wild people.

May 26.—Along the Harnesh River yesterday. It was barren: not a spear of grass was to be found for our animals so they starve. Could find no wood so we went without coffee. At Tubac¹⁴⁹ we found a little grass but not wood. Tubac is a deserted village as the Apaches frequently raid such villages.

May 27.—At Rancho de las Calabasas¹⁵⁰ are the ruins of an old church; with the altar still standing and a bell still hanging in the cupola. The road from Tucson¹⁵¹ lay in the valley of the Santa Cruz as far as this ranch which is occupied by 2 Germans. A third brother has been killed by the Indians and all their horses and cattle have been stolen by the savages. These 2 brothers kept an awful old "bachelor hall."

May 30.—Camped on a plain and saw great quantities of wild game. At Tucson, found a great many good buildings and a very nice stone church with several "monuments" inside. This place is nearly deserted on account of the Indians.

dary commission in 1853. For description of the route and country see Bartlett, *Personal Narrative* . . . , Vol. I, chap. X.

148. Harnesh was probably the Mexican town of Janos.

149. Tubac was in the Santa Cruz valley about 50 miles south of Tucson, Arizona. A presidio was established there in 1752. Emory describes it as abandoned. *Report*, I, 118. It was resettled in 1856 by Americans. Bender, "Frontier Defense . . .," p. 352 note.

150. Calabasa was thirteen miles from Tubac. Emory, *Report*, I, 133. It is also described in Bartlett, *op. cit.*, I, 391. For a general account of the early Spanish and Mexican Settlements in this area see Ray H. Mattison, "Early Spanish and Mexican Settlements in Arizona," *N. M. H. R.*, XXI, No. 4 (October, 1946).

151. See references in footnotes 149 and 150.

June 2.—Travelling due west. Struck California yesterday. It is truly a beautiful country with such fine valleys, hedged in by the picturesque mountains. Camped at a spring. The water tasted of mineral, perhaps soda.

June 5.—Travelled all day Sunday over a dry, sandy plain with no grass, water, or any sign of vegetation. Kept going all Sunday night. Felt rather tired Monday as we found no water until 3 P.M. About 11 o'clock this morning we were marching on, when a party appeared directly in front of us. Proved to be another party from California to meet us. We camped with them.

June 8.—Left the California party Wednesday and went due north, up the Colorado River, a large stream which empties into the Gulf of California. Met a body of Pimos Indians¹⁵² who were very friendly. We traded a dozen lead bullets for gold ones.¹⁵³ The Pimos practice well their knowledge of agriculture and are good fighters as well. Their women work at making baskets and clothing. Their huts are made of reeds and mud with straw roofs. These are built in oval fashion. They possess fine horses, mules, cattle, pigs, and even cows for milking. Their women carry baskets of grain and jars of water on their heads. The women wear a single garment, serving as a skirt during the day and a blanket at night. Came to the mouth of the Gila and went up it. This is the finest country I ever saw but can not be settled on account of Indians.

June 14.—Laid over on Monday to take a rest and catch fish. Yesterday saw a large band of Apaches who ran from us. We got one of their ponies. Left the Gila and met a party of 70 men going out to look for gold diggings.

152. The Pima Indians lived in the region from the Gila River in western Arizona to the southern part of the Mexican state of Sonora. A brief description can be found in Frank C. Lockwood, *Pioneer Days in Arizona* (New York: the Macmillan Co., 1932), pp. 218f, (C. E. B.)

153. The use of gold bullets by Indians is confirmed by Aubry in a journey across central Arizona. "The Indians use gold bullets for their guns. They are of different sizes and each Indian has a pouch of them. We saw an Indian load his gun with one large and three small gold bullets to shoot a rabbit." "Diaries of Francois Xavier Aubry, 1853-1854," Ralph P. Bieber, ed., *Exploring Southwestern Trails 1846-1854* (The Arthur H. Clark Company, Glendale, California, 1938), p. 370. The diary was also published by Walker D. Wyman in *N. M. H. R.*, VII, 1-31 (January, 1932).

June 15.—Camped on the summit of quite a high mountain range¹⁵⁴ with a good view of a vast plain, reaching towards the south. This plain is covered with Maguey¹⁵⁵ or Century Plants, growing high into the air.

June 19.—Past Copper Mines, near which Fort Webster is located. Also past Rio de las Animas or River of Spirits which is about the size of the Gila in this country or the old Genesee River in New York State. Stayed last night on a plain at a small spring. Today arrived at Mesilla,¹⁵⁶ a pretty town which is filled with very pretty women.

June 21.—Yesterday crossed the Rio Grande and camped at Fort Fillmore, ending our part of the duties with the boundary marking. The main party remained in the west to complete fixing the line during the rainy season when they might get enough water to cross the dry waterless plains. We got new shoes and fresh horses here and rested today.

June 30.—Started, June 22, up the Rio Grande to Los Lunas, arriving there, June 28. Immediately started down the river again with General Garland and Governor Meriwether as part of their escort.

July 3.—Past Fort Craig on a very warm day with swarms of mosquitos bothering us. Found a murdered man upon the bank of the river yesterday. Probably killed by Indians. Arrived at Fort Fillmore after 11 full days of hard riding with only 1 day of rest following return from the boundary trip.

July 4.—This morning the parade started with General Garland and Governor Meriwether leading it, followed by our Company, 2 companies of Infantry, Company B, 1st Dragoons, and the 3rd Infantry Band. We crossed the river and took possession of the town and valley of Mesilla in the name of the United States Government. A speech was

154. Probably the Burro mountains in southwestern New Mexico.

155. The Maguey plant was a distinctive feature of the country and widely used by the Indian and Mexican. For an early description see Bartlett, *Personal Narrative*, I, 290f.

156. A Mexican settlement established in the Mesilla valley after the War with Mexico. Baldwin, "A Short History of the Mesilla Valley."

made by the Governor and translated into Spanish. A flag staff was raised. The "Stars and Stripes" were then floated from the top and three times three loud cheers were given. The Band played: Hail Columbia, Yankee Doodle, and the Star Spangled Banner. The Mexicans, holding office, swore allegiance to our government. All Mexicans such as did not wish to obey our laws were notified to leave and to take refuge in Mexican dominions. This was the best 4th of July I have passed since I have been in the Army.

July 19.—Once more up the Rio Grande, leaving Fort Fillmore on July 5 and arriving at Los Lunas on July 12. Last 6 days spent in riding about the neighboring towns to buy corn for our horses.

July 20.—Called as a witness in a Court of Inquiry into a murder case at Albuquerque.

July 24.—Went in command of 25 men to see justice executed upon a Mexican who had been in prison and chained with an American. He, wishing to escape, killed the American who was sleeping. To get the irons clear, he cut off the dead man's leg at the ankle joint. It was feared the prisoner's Mexican friends would endeavor to rescue him from prison. For this reason we go to prevent it. He is across the river at Tome.¹⁵⁷

July 28.—Kept one sentinel in the cell and another out of the door, both day and night. The prisoner has been very dejected. A scaffold was erected in the plaza and guarded by 12 soldiers with ready arms. I, with the other 13 men, marched the prisoner out, accompanied by the Catholic Priest. He walked upon the stand; confessed to 5 murders; and was launched from time into eternity. We went home.

Aug. 1.—Transferred to Company B, 1st Dragoons. Commanded by Capt. John Davidson. Glad to be once more with my old friends.

Aug. 3.—With Capt. Ewell en route for Santa Fe. Last night camped at the Placer Mine, now worked by two Americans. I descended into the excavation 700 feet below the

157. Tomé is about five miles north of Belen or twenty-five miles south of Albuquerque on the east side of the Rio Grande.

surface by means of a windlass and bucket. Saw them wash out of one panful of dirt \$15. It was done in less than ten minutes. At Santa Fe bid adieu to Company G as I am to remain here, awaiting Capt. Davidson.

Aug. 5.—Capt. Davidson arrived yesterday. I reported to him. I am now with Company B, 1st Dragoons, now stationed at Algodones.

Aug. 9.—Feasting on fruit, obtained at Albuquerque. Past Las Tihares¹⁵⁸ in company with a train of 12 wagons loaded with provision for Fort Stanton. Past a miserable, dirty town in the mountains where dogs and all were hungry. Leaving Chilili, arrived at Tyrone [Torreon], quite a pretty little place at the foot of the mountains and located on a beautiful stream bordered with pine, walnut, and sycamore trees.

Aug. 13.—Arrived at Fort Stanton via Manzano, Gylina [Gallina] Spring, and Pattos. The fort is now going up fast. Quarters are already built for 8 officers, 1 company of men, a guard-house, the commissary and Quartermaster's store rooms, etc. Soldiers are all at work. Appointed Commissary Sergeant at once which exempts me from all manual labor. My duties are the receiving and issuing of orders.

Aug. 21.—Started yesterday with Company down Rio Bonita to open communication with Capt. John Pope of United States Army. He is said to be hemmed in by Comanche Indians upon the Rio Pecos and has lost 7 men, killed by Indians. Brought with us a howitzer, a 12 pounder. Came to a spot where we could not take it along; secreted it; and left it along Rio Ruidoso. Reached plain out of the mountains.

Aug. 26.—Left Rio Ruidoso; struck Rio Pecos on Aug. 24. The soil is filled with vermin. Thousands of rattlesnakes, tarantulas, and centipedes are running over the ground throughout this region. Down Rio Pecos. It is dry, barren soil. The banks are so high and steep that we can

158. Tijeras canyon is the route through the Manzana mountains due east of Albuquerque. The party traveled southward through these mountains and passed the small villages of Chilili and Torreón.

hardly find a place to water our animals. The water in the Pecos is quite brackish, not good water. Passed 2 or 3 salt lakes and crossed the mouth of the Rio Penasco.¹⁵⁹

Aug. 27.—Guadalupe Mountain¹⁶⁰ where we found a camp probably left by the Indians this morning. Suppose there had been 400 of them here. Found a pole stuck in the ground with a package of provisions tied to the top in a piece of raw-hide. Probably left for some party who are to follow them this way. We threw it in the river.

Aug. 29.—At Blue Water,¹⁶¹ a very deep stream emptying into the Pecos River, we went in to swim our horses. It was very warm. There was a kind of weed in the water and some of the horses became entangled. Two were drowned and their riders with them. We recovered the bodies of the men and buried them with the honors of war.

Sept. 1.—Last two days the thermometer was about 121 degrees above Zero. We traveled very slowly down the Pecos on account of the heat. No trees or shade to be had. Grass is completely burned up by the sun. Arrived at Captain Pope's camp. It is on the river but he sends a daily party out working ten miles from the camp. He is boring artesian wells¹⁶² on the Llano Estacado¹⁶³ or Stake Plain which is a dry sandy route through Texas.

Sept. 2.—Went out to the wells. One is 800 feet deep with no water yet. The boring is done by machinery and mule power. Captain Pope's camp consists of 76 soldiers of Company I, 7th Infantry, and 80 civilians who are employed by the Government.

Sept. 16.—Up the river on the same route back. Found

159. The Rio Peñasco flows eastward from the Sacramento mountains to the Pecos river.

160. The Guadalupe mountains lie southeast of the Sacramento mountains and westward from the mouth of the Rio Peñasco.

161. The Blue Water creek is probably the Dark Canyon creek on present day maps. It was also called the Sacramento at one time.

162. Captain Pope's well was about ten miles east of the Pecos river and a short distance north of the present day Texas-New Mexico boundary.

163. According to Herbert E. Bolton, the *Llano Estacado* or Staked Plain in the Southwest received the name from the appearance of the cap rock formation which marks the beginning of the plain. The cap rock has the appearance of a palisade or stockade at a distance. The traditional explanation, that the Mexicans planted stakes to mark their route of travel, is found in Gregg, *Commerce of the Prairies*, p. 338.

our howitzer all right. At Rio Bonita camped one night on what was formerly an Indian farm. An old hut was still standing. The soil was very rich. Reached Fort Stanton where I was appointed Orderly Sergeant.

Sept. 19.—Took charge of the guard. During the night 2 of the prisoners made their escape by digging a hole through the wall. Started with 4 men in pursuit of the runaways.

Sept. 21.—No sign of the prisoners. Went as far as Dog Cañon which is a poor place to camp as it is always a bad place for Indians travel here often. Went onto plain for the night. Turned back. Killed 2 turkeys along Rio Francisco.¹⁶⁴

Sept. 24.—Camped an hour upon a little stream. Saw a little smoke on the mountain. Supposing it was Indians, I reconnoitered but got safely into the Fort. Found Company all gone. I am left alone in my glory.

Sept. 28.—Company returned. I was put under arrest for absence without leave. Tried by a Court Martial and acquitted. Capt. Davidson gone again. I have command of the Company during his absence.

Oct. 8.—Capt. Davidson returned. Brought orders for the Company to move to Fort Fillmore. Preparing to move.

Oct. 16.—Left on October 11. Got wet crossing the Tularoso. Saw a large body of Indians on the mountain above us. Could not get at them. Camped at Dog Cañon before we crossed the 45 mile plain. Camped at San Augustine Spring last night. One man accidentally shot himself through the leg just above the knee. At Fort Fillmore, we took our quarters for the winter. Orders were issued to clean, and brighten brasses, and otherwise appear in a military style.

Oct. 22.—Bought a pony for \$90. Use it in riding to dances across the river, etc. At night went to a fandango at Santo Thomas on the other side of the Rio Grande. This small place is like all the rest.

164. The party is on the west side of the Sacramento mountains. The Rio Francisco probably flows westward and disappears.

Nov. 2.—Yesterday went to El Paso with Captain Davidson and Dr. Cooper.^{165a} Spent the day at Fort Bliss with the infantry before returning to Fort Fillmore.

Nov. 20.—Weather very fine. Colonel Bonneville¹⁶⁵ arrived from the United States by way of Texas with 150 recruits. This is the same man who explored the Rocky Mountains and California about 1831-1836.

Dec. 3.—With Major Cary H. Fry,¹⁶⁶ Paymaster, en route to San Antonio, Texas, via Fort Bliss, Presidio del Norte, and Ojo del Diablo which is a deep, dark, rocky ravine. Many murders have been committed by the Indians at this place. I had the camp as well guarded as I could with my party of 35 men. Major Fry, like most of the officers out here, fought in the Mexican War. He was at the Battle of Buena Vista.

Dec. 19.—Crossed the Llano Estacado where it was as warm as one could desire. It was more like June. Arrived at San Antonio, a fine business city about the center of Texas. There is a very fine market. Immorality and vice abounds to a great extent. This place is remarkable for several conflicts some years ago between the Texans and the Mexicans. It is particularly known for the defense of the El Alamo for two weeks by Col. Travis and 400 Texans against 4,000 Mexicans under Santa Anna. It was at the El Alamo that Col. Crockett was killed, and not even one of the Texans was left alive to tell the tale.

Dec. 21.—Spent yesterday seeing the sights and giving the men a rest. Turned for home. Whole command is mine as no officer now being with me.

Dec. 31.—Fort Davis¹⁶⁷ is a poorly built fort. Four

165. Benjamin L. E. Bonneville, commissioned 2nd Lieut., December 11, 1815, and Colonel, 3rd Infantry, February 3, 1855. He assumed temporary command of the Department of New Mexico, October 11, 1856. Bender, "Frontier Defense . . ." p. 346 note.

165a. George E. Cooper, Asst. Surg., August 28, 1847.

166. Cary H. Fry was commissioned Bvt. 2nd Lieut., 3rd Infantry, July 1, 1834, and Major Paymaster, February 7, 1853.

167. Ford Davis was established in the Limpia mountains, Texas, in 1854. See C. G. Raht, *Romance of the Davis Mountains*, El Paso, The Raht Books Co., 1919.

companies of 8th Infantry and One company of Mounted Rifles are stationed here.

Jan. 8, 1856.—When we crossed the Rio Pecos where it was $\frac{1}{2}$ mile wide and very deep and muddy, we lost 1 horse by drowning. Arrived at Gaudalupe¹⁶⁸ which is a little town. Glad once more to see the Rio Grande. Today is my birthday.

Jan. 11.—Yesterday at Fort Bliss, learned that 2 days ago the Indians came quite near the fort and seized upon a little drummer boy who was 12 years old. They took him off prisoner, poor little fellow. Arrived at Fort Fillmore and reported to Capt. Davidson. Weather is now warm and pleasant.

Jan. 24.—With Col. Bonneville and Capt. Davidson en route for Santa Fe to attend a Court of Inquiry in regard to Capt. Davidson's conduct at the Battle of Cienequilla. Stopped with Company I, 1st Dragoons, at Fort Thorn. By invitation recited Plato's "Soliloquy On The Immortality Of Soul" [that is, Plato's *Phaedo*] at a kind of theatre established here. Officers were all present. Major Wm. N. Grier went with us from Fort Thorn.

Jan. 27.—At Fort Craig, D. Company, 1st Dragoons and I Company, 1st Infantry, have just returned from a scout. Met the Indians; killed 7 or 8 of them; and took all their animals from them. They met a party of friendly Indians also and took them for foes. Fired upon them, killing 2 and wounding 10 more. It may make trouble.

Jan. 29.—4 of my men got drunk last night at Socorro. Today the drunken men were obliged to walk. Went 30 miles. Camped at Sabinal.¹⁶⁹ The footmen are pretty tired.

Jan. 31.—Met my old company at Los Lunas yesterday. It is some colder here than below. Major Carleton¹⁷⁰ and

168. Guadalupe is on the west side of the Rio Grande about thirty miles down the river from El Paso.

169. Another small settlement in the Rio Grande valley about midway between Socorro and Albuquerque.

170. James Henry Carleton was commissioned 2nd Lieut., 1st Dragoons, October 18, 1839, and Bvt. Major, February 23, 1847. He later played an important part in the history of New Mexico during the Civil War.

Lieutenant Robert Williams¹⁷¹ went on with us. Camped at Las Algodones. Carriage broke down. Went back to Albuquerque and got another.

Feb. 4.—At Santa Fe, stopped with the General's escort of 25 Dragoons. Court of Inquiry opened. Lieut. Williams and Kit Carson were called on the stand.

Feb. 7.—I was called on the stand at 10 o'clock Tuesday morning and dismissed for that day at 4 in the afternoon. On the stand again at 10 o'clock yesterday morning until 3½ o'clock in the afternoon. Court was closed today. Capt. Davidson's¹⁷² conduct was blameless.

Feb. 21.—Rejoined Company at Fort Fillmore on Feb. 17. Today left with Capt. Davidson and 80 men en route to the Organ Mountains in pursuit of Indians who stole the little drummer boy at Fort Bliss. Camped at Yellow Rock Spring.

Feb. 24.—Passed a silver mine, worked by Americans. Crossed a plain and salt lake which I should think was 10 miles in length, 3 miles wide. On a plain found an eminence 30 feet high. A spring was on top. I went to wash in the water with soap. Chemical action of the water and the soap made it like pitch before I knew it. My hands and face were covered and my hair was full of it with no water to wash it out.

Feb. 25.—Crossed a dry sandy plain. It was very warm with no water. A corporal belonging to the Infantry could not go any farther on account of thirst. Col. Chandler¹⁷³ ordered him to get up and go on. He replied that he could not. The Colonel told him, "By God, you must!" The soldier said that he could not and would not. Col. Chandler raised his sword, struck the man across the shoulder, cutting a deep gash 6 inches in length. The man fell, bleeding pro-

171. Robert Williams, Bvt. 2nd Lieut., 1st Dragoons, July 1, 1851, and 1st Lieut., June 7, 1855.

172. The implication is that Davidson was on trial, presumably John Wynn Davidson (see footnotes 85 and 100); there is no mention of this affair in the biographical sketches of Davidson in *Appleton's Cyclopaedia of American Biography*, and *Dictionary of American Biography*.

173. Daniel T. Chandler, commissioned 2nd Lieut., 3rd Infantry, August 1, 1838, and Captain, September 21, 1846.

fusely. We went on and left him. On the road we left 4 other men almost dead. 17 horses and mules died from want of water. At 10 o'clock at night, I went ahead with 6 men; found a spring; drank copiously; filled a dozen canteens; turned back; picked up the 4 men; and gave them water. They went on and joined the main body. I found the man wounded by Col. Chandler just gasping his last breath. Got down from my horse, put the canteen of water to his lips. He opened his eyes, recognized me, and died thanking me for the favor I had done him, a poor victim of an inhuman tyrant. I hope that a day of retribution will surely come.

Feb. 27.—In the mountains yesterday where we had plenty of water. At mouth of Dog Cañon, the Indians came out to meet us with a flag of truce. We had a talk with them. They said they knew nothing of the boy. They agreed to try and find him to bring him into Fort Fillmore in 20 days.

Mar. 2.—Towards home. Caught a squaw, took her prisoner. She informed us that the boy could not keep up with the Indians so they beat his brains out with rocks. Took old squaw along. Stopped at edge of Organ Mountains. Passed Stevenson's Ranch where a smelting furnace for silver is doing a good business.

Mar. 4.—Started for Fort Stanton on March 4, taking old route via San Augustine, Tularoso, etc. Arrived all sound and went in quarters.

April 9.—Easy days at present. All I have had to do for 28 days past is call the roll of the Company, 3 times a day, and make out morning reports. The soldiers all are hard at work building quarters. A girl came into the fort, stating she was taken captive by the Apaches 8 months ago. She says she is a Mexican. Would think she is about 16 years of age. She was taken care of and placed in the house of our Company washwoman.

April 12.—The pretended captive vamoused last night, taking with her a good stock of her protector's clothing. A pretty sharp trick which she was probably sent in by the

Indians to play. It is possible that she was merely following the natural habits of so many of her people.

May 6.—Company was out at drill. An awkward move was made by a number of men. A Captain became enraged, ran his sabre into a man's back, injuring him for life. The Captain says it was accidental. I don't know.

May 23.—News reached here that the Gila Apaches were committing a great many deprivations. It appears that old Degado,¹⁷⁴ a chief of that tribe, was sleeping in company with another Indian at San Diego. They were murdered in the night by some Mexicans. The Indians lay it to the Americans.

May 28.—Monday night some soldiers were gambling in an old tent which was filled with lumber. Two, named Jackson and Ferguson, quarreled. The former stabbed the latter with a pocketknife. I immediately arrested Jackson, put him in close confinement in the Guard House. Ferguson was taken to the hospital where he died today. He preceded me as Orderly Sergeant of the Troop. He was a very smart fellow but at times drank a little too much and gambled. He was very quarrelsome when under the influence of liquor. Jackson was placed in double irons.

May 29.—Funeral of Ferguson took place today. The order of the procession was: 1st, music—muffled drums, fifes; 2nd, funeral escort, consisting of 12 men with arms to fire over the grave; 3rd, Corpse and 8 pall bearers with crepe on their arms; 4th, horse covered with black velvet, saddle, bridle, arms, trappings strapped on, the boots in the stirrups, etc.; 5th private soldiers of his own company followed by other companies; 6th, Non-commissioned Officers; 7th, Commissioned Officers. The funeral cortege, as is usual, was commanded by the Orderly Sergeant of the deceased's Company. I was in command by that right.

June 1.—The prisoner, Jackson, was sent to Albuquerque and turned over to the Civil Authorities.¹⁷⁵

174. The correct spelling is probably Delgado, meaning slender.

175. "Died . . . Abraham Ferguson, Private, Enlisted October 10, 1853 at Fort Leavenworth by Lieutenant Whittlesey for five years. Last paid to June 30, 1856 by

June 8.—Left for Capitan Mountains¹⁷⁶ in pursuit of Indians who have lately stolen cattle from Anton Chico.

June 16.—In passing through a valley, I went upon the brow of a hill to spy out the region. I was three miles from the Company when I came upon five Indians who pursued me for a mile and a half. They could not overtake me. One fired, the ball passing through my left hand, fractured the bone of the middle finger. Reached the Company. Twelve men pursued the Indians, overtook them. Four of them were killed and the other one of the Indians escaped. We later camped at Seven Rivers,¹⁷⁷ so called because it is the junction of seven rivers.

June 26.—Albuquerque. Went in the Hospital under the care of Dr. David C. De Leon,¹⁷⁸ of the United States Army. Improving fast. I feel no pain at present.

July 1.—Today take charge of the Hospital as Stewart [Steward]. Dosing out medicine to 70 men, daily.

July 31.—Left the Hospital for Fort Thorn to join Company.

Aug. 9.—Joined Company again.

Aug. 15.—Camped out. A number of men are sick with "fever and ague." This is the first I have seen in this country. It is very malignant as many die.

THE END

Major Brice." Captain Davidson's Company B, 1st Dragoons, *Muster Roll*, June 30 to August 31, 1856, (C. E. B.)

"Turned over to Civil Authorities . . . William Jackson, Private. Enlisted February 23, 1856 at Fort Leavenworth by Lieutenant Sturgis for five years . . . Turned over to Civil Authorities at Albuquerque, August 18, 1856." *Ibid.*, (C. E. B.)

176. The Capitan mountains lie to the northeast of the White mountains in south-central New Mexico.

177. There is a short stream named Seven Rivers which flows eastward into the Pecos river, southeastern New Mexico.

178. David Camden de Leon, Assistant Surgeon, August 21, 1838; Major Surgeon August 29, 1856.

"Bronson, James H., private. Reduced to ranks from Sergeant, August 9, 1856. Sick in Albuquerque since August 19, 1856." See *Muster Roll Records*, footnote 175, (C. E. B.)

Notes and Documents

A HISTORICAL item pertaining to the oldest building constructed in Joseph City, Arizona, is printed in *The Gallup Gazette*, January 2, 1947.

Chee Dodge, 86 year old Navaho leader, died January 7, 1947. A lengthy account of his life is printed in *The Gallup Independent*, under the same date.

The Daily Current-Argus (Carlsbad), February 9, 1947, carries a story by Carl B. Livingston, II on the hanging of a desperado at Carlsbad in 1894. It illustrates the era when the West was emerging from the frontier stage of historical development.

Two old-timers reminisce about Billy the Kid in *The Daily Current-Argus*, February 9, 1947.

Now that the war has ended, peacetime interest in local history is reviving. The Doña Ana County Museum Society has been reorganized, and a movement is under way for organizing a historical society in Albuquerque and establishing a museum.

Through the courtesy of Marshall R. Anspach, Associate Editor, *Now and Then*, a quarterly magazine of history and biography published by the Muncy Historical Society and Museum of History and its affiliates, Pennsylvania, certain numbers of that magazine which carry items on the history of New Mexico have been brought to the attention of the REVIEW. Volume VIII, No. 1 (April, 1945), carries letters written by R. F. Piatt (friend of Kit Carson), descriptive of Colorado and New Mexico in 1861-1862. Volume VIII, No. 4 (April, 1946), carries a brief story of Dr. Michael Steck, one-time superintendent of Indian affairs in New Mexico.

The following document was transcribed from a microfilm copy of the original which is in the files of the Office of Indian Affairs, National Archive.

Head Quarters Fort Defiance, N. M.

August 22d 1856

Sir—

I have the honor to inform you, that during a visit to the Pueblo of Zuñi, made since my letter to you of the 12th of June last was written, I saw good reason for reinforcing the suggestions contained therein relative to those Indians; by inference, some of these are equally applicable to the Moquis.

The Zuñis have planted much more and in a better manner than in former years, and are in a very thriving condition, which they justly ascribe to their sales for this fort. They were much concerned at an erroneous rumor, that we were to buy no more forage from them.

I discovered, however, what they endeavored to conceal, that ardent spirits are being introduced into the Pueblo, as well by abandoned Mexicans, as by some of their own people. Their own taste for it, & the prices paid for it by Coyoteros, Navajoes, & the lower class of Americans who may visit Zuñi, will cause this traffic to rapidly increase, with the worst of consequences.

The largest and best planting grounds of these Indians are at La Nutria & the Pescado, each some 16 miles from the Pueblo at present occupied. These grounds have been in their possession for many years, probably during the entire existence of the Pueblo itself, & their continued possession of both of them is of vital importance to the maintenance of that community; without them it would be inevitably and utterly ruined.

I do not know by what other title than possession these lands are held, nor have I legal knowledge enough to know whether that be good against the Navajoes, under the treaty of Laguna Negra. If there be any doubt about it, the present difficulty with the latter should, by no means, be permitted to pass without removing such doubt. It would be, in every way, most unfortunate to have the Navajoes cultivate in these localities, and in such proximity to the Zuñis; it would entail endless troubles upon our authorities, and the greatest evils upon the parties concerned. Fortunately, these grounds are not at all necessary to any but the Zuñis. If congressional legislation be necessary to confirm the Pueblo title to these lands, it can not be too early nor too earnestly invoked.

In this letter, and in the former one, as well as what you know of the continually recurring causes of irritation between the Navajoes and Zuñis—always terminating against the latter, and generally unjustly so—I trust you will see sufficient reason for requesting, at an early date, the appointment of a special Agent for the *Zuñi District*.

Upon reflection I am convinced that it would be highly injudicious to include in that district more than Zuñi & the "Seven Pueblos" of

Moqui, the farthest of which, Oraibe, is one hundred and twenty miles north west of Zuñi. That is the farthest point west any where near its longitude & East of the Grande Colorado, of which white men have any knowledge.

The nearest of the other Pueblos mentioned in mine of the 12th June, is 100 Miles from Zuñi, and to its East; to include these would make the district quite too extensive. Besides, the agent would certainly reside any where but at Zuñi or Moqui, in one of which he should be ordered to fix his residence; the other Pueblos have relatively very little need of an agent. In fact, the Moquis, from their complete isolation; their timidity and ignorance, which make them the prey of the rapacious wild tribes which entirely surround them, as well as by their numbers, their agricultural habits, the hope of their improvement and the important effect which the reaction of that improvement would have upon the Utahs, Coyoteros, Cosninas, Yampais, Gileños, Pinaleños, and Navajoes—indeed from every philanthropic consideration—call most loudly for the services of a faithful Indian Agent.

The letter of the Commissioner of Indian affairs to the late J. S. Calhoun, then Indian agent in this Territory, under date of April 24th, 1850, favors the districting of the Pueblos in New Mexico, & the appointment of Agents for the most important ones. Certainly the district in question is the most important of any; and it is not to be doubted that the present commissioner would move in this matter; were he acquainted with the circumstances.

But this movement ought to be accompanied by the exhibition of some *tangible good* which they will have received, or are to receive, from the Americans.—The Zuñis are already well aware of the beneficial influence which our Government has had upon their condition; and it is in this connection that I venture to ask again that a helping hand be extended to the Moquis.—

I see no reason why our purchases of forage at Moqui should not have the same effect as at Zuñi, where we have given a *motive* in giving a *market*. But this involves the necessity of providing for those *Storehouses*, referred to in my former letter. I know that this is a small matter, but to 2500 peaceable Indians, who, solely because they are peaceable, are rapidly declining before their rougher neighbors, and who reasonably look to us for sympathy, it is a most important one. Surely the direct influence which the prosperity of these Pueblos, pushed out amidst so many wild tribes among whom it is our best policy to introduce the Pueblo system, would have upon those tribes, would make so small an expenditure as \$1000.00 (\$333.00 for each building) a measure of enlightened expediency; coupled with its rendering subsequent gifts to them unnecessary, it would be one of wise economy.

Such a disbursement properly belongs to the Indian Department;

were I to ask General Garland to make it chargeable to Quartermaster's appropriations, I think he would find it necessary, were he in favor of it, to refer the request to the Secretary of War. The latter can not know whether any suggestions of mine could justify him, in the absence of a specific appropriation for such a purpose, in giving orders in the case.—

I am Sir,
very respectfully,
Your obedient Servant
(signed) H. L. Kendrick
Captn 2nd Artillery & Bt. Major
Commanding Fort Defiance

To
Hon. D. Meriwether
Gov. & Sup. Indian affairs
Santa Fe, New Mexico.

Copy for Commissioner of Indian Affairs.

H. L. Kendrick

Bt. Maj. & Comd. Ft. Defiance

Book Reviews

Hubert Howe Bancroft. By John Walton Caughey. Berkeley: University of California Press, 1946. vii, 422 pp.

At last the long awaited and very much needed biography of Hubert Howe Bancroft has appeared. The reason for its long delay is expressed by the author in his preface: "In common with most of us, Bancroft fell short of perfection. Some of his defects were seized upon, and it came to be the fashion to disparage him not only for these shortcomings but in all that he had done. The result was to becloud his eligibility for biographical attention. An even greater deterrent was the bulk of his published works . . . which tended to ward off prospective biographers."

Today, fifty years after his comprehensive *History of the Pacific States* in thirty-nine ponderous volumes first appeared, it is possible to view the over-all work of Bancroft somewhat objectively. And since the University of California purchased the Bancroft Library in 1905, hundreds of students have had access to his magnificent collection, and this institution, largely as a result of it, has won merited distinction in the fields of Latin American and West American History. Bancroft was the first determined collector of materials on western North America and the first to undertake to chronicle its history comprehensively and exhaustively. That he did his work well, despite his critics, is attested from the fact that his *History of the Pacific States* stands today, a half-century after its publication, as the fundamental reference on this vast subject and, generally speaking, each of his state histories remains today, even though out-moded, the best of such histories yet to appear. The late Professor Charles E. Chapman, recognized authority on California History, has this to say: "Bancroft's works constitute the greatest single achievement in the history of American Historiography and as concerns California history, particularly, there can be no doubt that he had

decided the form it has taken" (p. 386). And Bernard de Voto, interpreter of the American West, adds: "I cannot imagine anyone writing about the history of the West without constantly referring to Bancroft. His prejudices are open, well known, and easily adjustable. A generation ago it was easy for historians to reject much of what he wrote; in the light of all research since done, it is not easy now. . . . I have found that you had better not decide that Bancroft was wrong until you have rigorously tested what you think you know" (p. 387).

Dr. Caughey recognizes the difficulty of his undertaking for Bancroft was indeed a many-sided figure. In his eighty-five years, the Ohio-Californian among other things was "businessman, publisher, collector, historian, essayist and philosopher." Therefore, he says, the purpose of this volume is not to exhaust the subject or to pretend to present a definitive biography, but "to perform (merely) an introduction, after which readers who wish to develop the acquaintance further may do so by turning to Bancroft's own volumes and by contemplating the Bancroft Library in its continual functioning." But the author has succeeded in presenting much more than an introductory study. He not only most adequately presents Bancroft in his true light, after giving due consideration to the caustic criticisms of his contemporaries (see especially pp. 331-337, 348, 380-381), but introduces the reader intimately to the content of Bancroft's ponderous volumes. Bancroft's role, as a businessman, as a collector and as an historian are each scholarly appraised. "In collecting as in business, he exhibited a wisdom and energy approaching the inspiration of genius" (p. 388). Speaking of Bancroft in the role of historian, where his lack of training and experience made the chances of success appear more remote, Mr. Caughey writes: "He chose to deal with his grand subject in its entirety rather than to be satisfied with the annals of some minor locality" (p. 389). And because the task obviously outreached his individual capacity, he chose to surround himself with a staff, the members of which, he freely admitted, did much of the

work. "Disparities in style remind readers that he was not the sole author, yet his was the idea, his the compelling force that kept the project alive, and his the directing hand throughout. Increasingly, with the passing of the years, his is the credit" (p. 389). Unfortunately, Bancroft made the professional mistake of withholding credit for the work done by his collaborators, and hence incurred a great deal of unnecessary criticism. But his original decision "to use only his own name was a commercial one and reflects his unfamiliarity with the ways of scholars" (p. 336).

Hubert Howe Bancroft was born May 5, 1832, at Granville, Ohio, the son of Azariah and Lucy Howe Bancroft, both of New England stock. After an unsuccessful venture as an apprentice in a book bindery, owned by his brother-in-law, he came to California in 1848 on a contract to sell a consignment of books from his brother-in-law's firm. Here he was successful in almost everything he turned his hands to,—teamster, miner, clerk, finally proprietor of a business firm at Crescent City. In 1858 he opened his first book store on Montgomery Street in San Francisco. In this new enterprise the industrious Bancroft prospered. And it was not long before the proprietor was operating the largest and most exclusive establishment of its kind on the Pacific Coast.

Bancroft became interested in collecting rare books and manuscripts in 1859. Ten years later he had collected about 10,000 volumes and in 1870, "thanks largely to the Andrade auction, he had 16,000" (p. 78). Ultimately he was to reckon his holdings at not less than 60,000 volumes. Given these three advantages—a professional bookman, ample money, and a diligent researcher—the Bancroft collection still might not have attained much significance. "Had Bancroft veered off, as some collectors have, in the direction of fine bindings, first editions, or some restricted specialty, his library might have had little more than curiosity value. His wisdom in seeking beyond state and national limits and his brashness in taking in the entire western half of North America were basic contributions. Similarly, his policy of collecting everything that bore on western history, whether

it was prose or poetry, book or pamphlet, broadside or newspaper, authoritative or partisan was worth much to the ultimate importance of his library" (p. 83).

The urge to write a comprehensive history of western North America became first manifest in 1870. During the next twenty years, more than six hundred persons were employed in his literary workshop engaged in this task. Several of these, for their day, were well trained specialists in their chosen fields such as Frances Fuller Victor, Enrique Cerruti, Walter F. Fisher, T. Arundel Harcourt, J. G. Peatfield, Ivan Petroff, Henry L. Oak, Thomas Savage, William Nemos, Albert Goldschmidt and Alfred Bates. While the history of each western state is comprehensively reviewed, it was California naturally which received major emphasis. His seven volume treatise of this state is by far its largest and most comprehensive history; "it offers the most lavish assortment of entries, the largest array of facts and the most generous provisions of detail" (p. 199). Modern scholars with their superior scientific training, writing on California history, have supplemented Bancroft; however, their cumulative efforts have not matched, let alone surpassed, his contribution, recognized even today as the standard history of that state.

In 1886, the Bancroft book store was burned to the ground in what has been described as "San Francisco's worst fire in a decade" (p. 306). Bancroft's total loss was almost \$1,000,000. Less than half of this amount was covered by insurance. Fortunately the library, securely housed in another section of the city, was saved. Partly as a result of this disaster, Bancroft decided to sell his library. It was purchased in 1905 by the University of California, at a price of \$250,000, of which amount Bancroft contributed \$100,000. Referring to this important transaction, Benjamin Ide Wheeler, President of the University of California, remarked: "The purchase of the Bancroft Library marks a great day in the history of the University. It means the inevitable establishment at Berkeley of the center for future research in the history of Western America; it

means the creation of a school of historical study at the University of California; it means the emergence of the real University of study and research out of the midst of the colleges of elementary teaching and training" (p. 364). And subsequent events have more than borne out this prediction.

Bancroft lived for more than a decade after the sale of his great historical collection, happy in the knowledge that it would be well taken care of and used to the advantage of his beloved state. He died at San Francisco, March 2, 1918. In his later years, the great western historiographer found satisfaction "in writing, in reading, and above all in quiet association with his family" (p. 381).

Dr. Caughey's book is exceedingly well written. His style is clear, yet direct and forceful. His treatment of a highly complex subject is scholarly and objective. Nowhere is there evidence of bias or a misuse of the sources. His *study* is stimulating and thought-provoking. The book is beautifully printed and bound. There are nineteen illustrations. One of these is a photostatic copy containing one of Bancroft's statements which is well worth reproducing here: "My conception of the province of history is a clear and concise statement of facts bearing upon the welfare of the human race in regard to men and events, leaving the reader to make his own deductions and form his own opinions" (p. 384).

University of Utah

L. H. CREER

The Navaho. By Clyde Kluckhohn and Dorothea Leighton. (Cambridge: Harvard University Press, 1946, xx, 258 pp. 20 pls., 12 figs., 2 tables.) \$4.50.

Although intended primarily as background reading for teachers and administrators in the Navajo Service, this book should have a special appeal for all Southwestern readers. We are neighbors of the Navajo—see them daily, rub elbows in Woolworth's, hear the pro and con arguments on government administration methods, live in a land much like the reservation country—yet know them not. The gay skirts,

clinking jewelry and rich blankets are but public trimmings—the visible leaves on an ancient tree whose real life flows in the unseen interior of its sturdy trunk. It is this heartwood of Navajo culture which Kluckhohn and Leighton expose, impartially and unromantically, for our enlightenment.

Family life, social prejudices and ideals, religious pre-occupations, as well as the daily struggle for livelihood, are described in terms which indicate why many of these cultural features unwittingly and inevitably prove stumbling blocks to an administrative service which seeks only to improve their health and economy. Especially interesting is Chapter Four wherein the Navajo view of the White world is shown to be not the one of uncritical admiration which we so complacently expect. In short, this is a book of interpretation; the authors serve as translators of culture between the Navajo and the Indian Service, and any intelligent reader should achieve a new and sympathetic attitude toward both well-meaning but baffled factions. The authors might well have spent more effort in explaining why cultural habits and a "Navajo point of view" persist, since the nature of culture which is clear to them as anthropologist and psychiatrist, is far from comprehensible to the average layman. A few pertinent examples of residual taboos, social prejudices, and religious attitudes from our own society, to parallel the Navajo cases, would have been illuminating.

Historians, like most anthropologists, will feel that more space should have been devoted to the three hundred years of Navajo-White contact. Pre-Columbian, Spanish, and American periods of Navajo history are too casually compacted into a scant ten pages. Nevertheless, present-tense history may be seen in the contemporary situation of the Navajo and the cultural complications resulting from changes in a national life. Such changes have occurred repeatedly in the historic past and are seen the world over today. The authors point out that the Navajo case is but a specific example of the general problem which results from cultural derangements. And I should like to refer any

doubters to a nearly identical case from the other side of the globe: the current attempt to convert nomadic Arab tribes into settled agriculturists as described by Afif A. Tannous in *The Arab Tribal Community in Nationalist State* (Middle East Journal, vol. 1, no. 1, pp. 5-17, 1947).

The friction between the Navajo way of life and the government's administrative program is emphasized, necessarily, in this book which seeks to ease that friction with a better mutual understanding. But the "Navajo problem" should not be viewed as unnatural by the general public, rather, accepted by them, the Navajo, and the Indian Service as inevitable. There is no quick nor perfect solution to the human problems which arise during the long metamorphosis of a once majority culture, reduced to minority status, into a normal national sub-culture. Progress has been made in improving Navajo health, education, and economy, and, in a country where every man considers himself a cross-roads commentator, will continue to be made to the accompaniment of outspoken criticisms. This is, perhaps, an indication in itself that the Navajo are approximating our national norm.

Santa Cruz, Calif.

A. H. GAYTON

The Texas Republic: A Social and Economic History. By William Ransom Hogan. (Norman: University of Oklahoma Press, 1946. Pp. xiii + 338. Illustrations.) \$3.00.

There was a time in the history of Texas when the large majority of the Anglo-American population of this great land consisted of very recent newcomers. They soon learned to love Texas so fervently that they fought for and won its independence from Mexico. The story related in *The Texas Republic* portrays the social and economic affairs of the people who inhabited the independent nation that sprang into being from their efforts on the field of battle. These Texans increased their love for and their "ebullient pride" in Texas during the ten years of its existence as an independent republic. Native-born Texans still have this love for and pride in

Texas, and those Texans who will read *The Texas Republic* cannot help but feel a justified increase in this love and pride.

Eleven main chapters carry the story of this excellent and accurate book. Throughout these chapters many persons appear and perform their parts in a very realistic way. To mention them would require much time and space. The twelfth or closing chapter entitled "Final Inspection" takes a last look and summarizes the story. The author has succeeded in hewing closely to his purpose of portraying the economic and social history of Texas in its republican era.

In "Gone to Texas," the opening chapter of this excellent treatise, the author explains why and how people went to Texas. The second chapter, "The Necessaries of Life," gives an account of how Texans provided themselves with food, raiment, and shelter. The difficulties which Texans had in getting about from place to place are discussed in the chapter, "Roads of Mud and Slush." "Times are Terribly Severe" portrays the hard times which Texans shared with the United States during the panic of 1837. "Fun and Frolic Were the Ruling Passions" contains a clear-cut portrayal of the ways in which Texans gave free rein to the pleasures of life. In "Education, Both Solid and Ornamental," the efforts of Texas to lay the groundwork of an educational system are ably discussed. "Tall Talk and Cultural Ferment" deals with the beginnings of literature in Texas, while "Fighting the Devil on His Own Ground" is an account of religious conditions in the young republic. In "These Racking Fever Chills" the author takes a look at health conditions and frontier medical practitioners. "Curses on the Law's Delay" provides the reader with an insight into the ways in which laws were enforced upon offenders against the public weal, while "Rampant Individualism" paints the Texans like their American neighbors as full of "the boundless impatience of restraint."

The twenty-four illustrations of this book are well chosen and enhance its usefulness. The format is good and the print is pleasing. The bibliography of twenty-eight pages with its listing of 638 items consists mostly of "con-

temporary sources—letters and diaries, governmental archives, newspapers, pamphlets, and books—” and of articles and studies based on some of these sources, many of which appeared in *The Southwestern Historical Quarterly* and to which due credit is given. Professor Hogan found these source materials “in manuscript depositories and libraries not only in Texas but throughout the United States.” In other words, a tremendous amount of careful research was done by Professor Hogan preceding the writing of this highly interesting synthesis. Collectors of Texana, libraries, and persons interested in the history of Texas cannot and will not want to be without a copy of *The Texas Republic*, the definitive work for the period and subject which it covers.

The University of Texas.

RUDOLPH L. BIESELE

Necrology

EDGAR LEE HEWETT.—The death of Edgar Lee Hewett in the Presbyterian Sanitarium at Albuquerque on the last day of 1946, in his 82d year, closed a colorful career not only in science, but in several other fields of human endeavor. While his fame was international for his research in American Archaeology, he also earned lasting gratitude of the Nation for his successful collaboration with the late Congressman John Fletcher Lacey in placing upon the federal statute books the act for the preservation of American antiquities. New Mexico, and its capital in particular, owe him in addition to the world-wide publicity his research in South-western archaeology gave them, the founding of the Museum of New Mexico and the School of American Research in Santa Fe.

His *Two Score Years*, the last of Dr. Hewett's many works, written and published when he had reached four-score years, tells of his boyhood and his adolescent years. The first twenty years were those of a "Country Boy" who lived the life in some respects of Huckleberry Finn but always with that "hunger in the head" which became the driving force of a life time. "The story of my second twenty years," he writes, are "the record of a student scout, divided up between teaching, excursions into various lines of thought, collegiate studies, explorations of all sorts—all quite unsystematic, but looking toward a larger field of action." It is a fascinating little volume, reviewing the memories of a wise octogenarian of the first half span of his life. "To know what was beyond the ranges, to move on to the frontiers of knowledge, was an urge that could not be denied," was the beginning; the end, he sums up: "I shall go down into no valley of desolation. I am going on. The symphony is not finished."

Of Dr. Hewett's ancestry we have the excellent and detailed account by the late Lansing Bloom, an associate of many years. "Hanson Harvey Hewett was of Yorkshire

stock and traced back through New England to the gentry folk of Hadley Hall in the mother country. Tabitha Stice, whom he married in Illinois in 1851, was the daughter of Charles and Martha Stice, a staunch Presbyterian family of German and Scotch-Irish stock, who traced back through Kentucky, Virginia, and Pennsylvania. For some years, she had taught in the Cherry Grove Female Seminary, in Abbingdon, Ill. Her collateral family lines show a connection with Woodrow Wilson; the Hewett family was related to the Phillips Brooks and Lowell families, of New England." After all, there seems to be something valid in heredity, judged by Dr. Hewett's achievements in statesmanship, literature and science.

Dr. Hewett was the youngest of five children, born on November 23, 1865, in Warren county, Illinois. Again citing Bloom: "The paternal grandfather had valuable holdings in land and cattle and met a tragic death at the hands of three highwaymen when he was returning home with a large amount of money after a sale of stock. About 1873, the father moved to Chicago to go into a commission house enterprise, but suffered heavy losses through the rascality of his partner. One happy memory of Edgar Lee's boyhood is of a beautiful white Arabian horse named 'Pompey,' which he and his brothers would ride proudly through the streets of Chicago." The family moved to Hopkins, Mo., in 1880, and this was the family home until the father's death in 1904, Dr. Hewett's mother dying in 1914 at the age of 91. It was from Hopkins that Hewett went to Tarkio, Mo., where he attended Tarkio College and where a few years later he taught literature and history, in the meanwhile having been a country school teacher from 1884-1886. Superintendent of schools at Fairfax, Mo., 1889 to 1892, he went to Florence, Colorado, where too, he was superintendent of schools. Called to the newly created State Normal School at Greeley, Colorado, he was superintendent of the teacher's training department from 1894 to 1898. He became the first president of the Normal University, now Highlands University, Las Vegas, officially closing his teaching career in 1903,

although he was an inspiring teacher all of his life, those sitting at his feet learning much that is not included in an institutional curriculum.

Hewett was only in his 38th year when he gave up teaching as a profession to take up archaeological research in earnest, although he had more than a passing interest in the science for more than seven years previous. He made the Pajarito Plateau, some twenty to thirty miles west of Santa Fe, his particular province continuing his first field expedition in that region of cliff dwellings and community houses each summer for some years. The geographical nomenclature of that region, which he made known to the world, is his. It is on this plateau that today is located the Los Alamos Atom Research Laboratory. It was also there, as a result of his research and excavations, that the Bandelier National Monument was established, just as the Mesa Verde National Park in Colorado owes its establishment in 1906 to his archaeological survey and report to the federal government. It was in that year that he prepared the legislation for the preservation of American antiquities known as the Lacey Act. He had studied law in his youth, supplementing a business college course, which gave him facility in drafting this legislation and later similar acts which became law in New Mexico.

Influenced greatly by Lewis H. Morgan, often called the father of American anthropology, he also studied the works of John Wesley Powell and Frederic W. Putnam and Daniel Brinton, following an earlier inclination induced by perusal of Stephens' works on the Mayas and the Catherwood drawings of the Maya monuments which fell into his hands during his boyhood. He received the degree of Doctor of Science in 1908 from the University of Geneva, Switzerland, which he attended in 1903, studying under Professor Waurin and Edouard Naville. In 1905 and 1906, he made preliminary trips to Mexico and Central America, which led to important explorations among the Tuhumares in northern Mexico and the excavation of the ancient Maya city of Quirigua in the Motagua Valley in Guatemala. This brought

about a revival in the scientific study of the Maya culture and chronology and the making of replicas of the Quirigua monuments for the Panama-California Exposition at San Diego together with the painting of murals of ancient Maya cities by the late Carlos Vierra, which were placed in the California building at San Diego.

The mere enumeration of activities as printed in the 1947 edition of "Who's Who in America" gives some measure of the far-reaching scope of Dr. Hewett's interests. Included are: Research work in Italy, Greece, Palestine, Egypt and Mexico, 1903-1908; director of American Research for the Archaeological Institute of America from 1906; director School of American Archaeology (later School of American Research) from 1907; president of the managing board of the School from 1930; director of the Museum of New Mexico from 1909; director of exhibits in science and art, Panama-California Exposition, San Diego, 1911-1916; director San Diego Museum 1917 to 1929; professor anthropology, State Teachers College, San Diego, 1922-1927; professor of archaeology and anthropology, University of New Mexico 1927-1940, also in University of Southern California since 1932, later emeritus; special lecturer American School of Oriental Research, Jerusalem and Bagdad, and with Yale-Babylonian Expedition in Palestine, Syria, Arabia and Mesopotamia, 1923; explorations in Morocco, Algeria, Tunis and the Sahara Desert, 1926, Asia Minor and Mediterranean Islands, 1930. All this in addition to the excavations, explorations and field expeditions which he directed in New Mexico, Colorado, Utah, Arizona, Mexico, Peru, Bolivia, Guatemala and Ecuador. Founder of departments of Archaeology and Anthropology at the University of New Mexico and the University of Southern California, he was also the founder, with the late Dr. Zimmerman and the writer, of the University of New Mexico University Press, and of summer field schools in the Chaco Canyon, on the Jemez and in the Rito de los Frijoles. Dr. Hewett was a fellow of the American Association for the Advancement of Science, president of its Southwestern Division in 1920; life member and vice-presi-

dent of the Archaeological Institute of America; chairman of the New Mexico Historical Service, both for the First as well as the Second World Wars; director at one time of the state child welfare service, New Mexico, State Council of Defense 1917 and 1918; vice-president American Federation of Arts from 1919, Himalayan Research Institute from 1928. He was a 32d degree Mason and a member of the Santa Fe Rotary Club, of the New Mexico Historical and the Santa Fe Archaeological Societies. Degrees conferred on him were M.Pd., Teachers College, Greeley, Colo., 1898; D.Sc., University of Geneva, 1908; LL.D., University of Arizona; L.H.D., University of New Mexico, 1934; D.Sc., Knox College, 1939.

Dr. Hewett was a prolific and facile author, his bibliography covering more than two hundred titles, his bound books more than twenty-five. His subject matter, archaeological, pedagogical, philosophic, historical, geographical, anthropological, polemical, sociological and auto-biographical, as a rule is treated in popular rather than in technical manner, and some of his books have gone into several editions. Among those who studied under him in College, University and in the field, some have won national fame and many are successful in their professions and occupations.

A permanent monument to Dr. Hewett is the Museum of New Mexico and the School of American Research in Santa Fe, established not without some opposition and after considerable controversy. On one hand, Dr. Hewett had the faculty of drawing to himself a host of co-workers and influential friends who followed his lead without question, but his decided opinions on controversial matters also made him enemies in professional and political lines, enemies who occasionally made themselves felt even locally in Santa Fe. However, in his declining years, these animosities had disappeared with the passing of some his most caustic critics. The story of the founding and growth of the Museum and School is told at length in annual reports, magazines and books. The Museum and School were Dr. Hewett in the mind of his friends, in fact of most people. However, he laid the foundation deep and strong with a view that the institu-

tions should be of ever increasing usefulness to humanity and the Science of Man in general, and to the State of New Mexico and its people in particular. One of his last acts was to will to the School all of his estate, creating the Hewett Foundation to which he had previously deeded all of his real estate holdings, his comprehensive scientific library, his art and archaeological collections. The last of his family (there are now no living brothers and sisters), and the sole near survivor is the widow, Mrs. Donizetta Hewett, a faithful companion on scientific expeditions and explorations for thirty years. Of Dr. Hewett's marital life, Professor Bloom wrote in the monumental seventieth anniversary volume, *So Live the Works of Men*, honoring Dr. Hewett: "On September 6, 1891, Mr. Hewett married Cora E. Whitford, whom he first met when they were both teaching in Missouri. Courageous and cheery in spite of failing health during the years in Colorado and later in Las Vegas, Mrs. Hewett entered wholeheartedly into her husband's deepening interest in archaeology. Often they came to Santa Fe and would stay at St. Vincent's, which was then, in part, a residential hotel, and friends would see 'Edgar' (as she called him) starting out for a day in the field, carrying Mrs. Hewett in his arms [to the conveyance]. When he went abroad to study in Geneva, they used a wheel-chair in getting around together. This chapter in his life was closed by the death of Mrs. Hewett in Washington, in 1905.

"Six years later, Mr. Hewett was again married, this time to Donizetta Jones, a girlhood friend of the first Mrs. Hewett, who had come to Santa Fe and who taught for a time in the Allison Mission School. . . . 'Doñi' (as Dr. Hewett addresses the present Mrs. Hewett) has been, not only the gracious mistress of his home—in Santa Fe, San Diego, Washington, or wherever he happens to be hanging up his hat—but she has also been his companion on many a field trip throughout the Southwest, in Mexico and Middle America, in Europe, northern Africa, and the Orient. She has even shared a serious automobile wreck in the Arabian desert with him." Their last trip abroad was just prior to

the Second World War on which Dr. Hewett made a special study of social legislation and conditions in Sweden, Norway and Denmark.

A day after presiding over the annual joint meeting of the Board of Regents of the Museum and the School of American Research at the end of August, 1946, Dr. Hewett left for Albuquerque to take up his residence at the Presbyterian Sanitarium in Albuquerque, where he and Mrs. Hewett had been in residence a number of winters. It was evident that Dr. Hewett was failing. In fact, he had made detailed arrangements for his succession before leaving Santa Fe, and instructions for his cremation in case of death and a memorial service in the St. Francis Auditorium in place of the customary funeral observances. Although he took to his bed some time before Christmas, he continued active direction of the Santa Fe institutions, members of his staff visiting him at frequent intervals for consultation and instruction. He slept peacefully away in the early morning hours of December 31, 1946. Memorial services will be held in Santa Fe at the annual meeting of Regents and Managing Board of Museum and School on Sunday afternoon, August 31, 1947.—P.A.F.W.

GEORGE WASHINGTON ARMIJO.—A member of the New Mexico Corporation Commission at the time of his death on Sunday forenoon, February 16, 1947, Armijo was typical of the Spanish-American genius for practical politics and political office holding. His career as an office holder began before he was of age, and during his life time he was successively a stalwart Republican, a Roosevelt Progressive and finally an outspoken Democrat. He himself would often declare that he learned the political game while napping under the desk of his grandfather, Colonel J. Francisco Chaves, who after serving as New Mexico's delegate in Congress, presided for a number of terms over the territorial legislative council. Armijo was born in Peralta, Valencia county, March 16, 1877, the son of Mariano Armijo and Lola Chaves Armijo, from a long line of distinguished ancestry. Upon returning

from the college of the Christian Brothers in St. Louis, he held several minor city and county offices. In 1898, he was one of the first to volunteer his services in the Spanish-American war, and enlisted in Troop F, Roosevelt's Rough Riders, becoming a non-commissioned officer with the rank of sergeant and orderly to Col. Theodore Roosevelt, later president of the United States. Armijo was wounded at the battle of Las Guasimas in the Cuban campaign, on June 24, 1898. Returning to Santa Fe he was elected probate clerk of Santa Fe county. In 1902 and 1903 he served as assistant postmaster of Santa Fe under Postmaster Paul A. F. Walter, who had appointed him upon personal request of President Theodore Roosevelt. Defeated for member of the State Corporation Commission at the first state election in 1911, he became secretary of the Commission. Among various other political positions held by Armijo were those of sheriff of Santa Fe county for four years, speaker of the legislative house 1939 to 1940, state senator 1941 to 1944, secretary of the Sheep Sanitary Board, member of the Santa Fe city council, member of the Santa Fe board of education, secretary of the Constitutional Convention in 1910, chief clerk of the New Mexico house of representatives and delegate to city, county and state conventions. He was elected to the State Corporation Commission last November and was president of the Commission during his previous term. Armijo was much in demand as court interpreter and as an orator at political conventions and patriotic events, his oration at the dedication of the Maximiliano Luna memorial at Las Vegas being reprinted in the Congressional Record. A few days before his death he addressed the legislative house in characteristic manner. In 1906, President Theodore Roosevelt, on a visit to Santa Fe, acted as godfather at the baptism of Armijo's son, Theodore M., who with two other sons, George W. of Silver Springs, Md., and Anthony J., Los Angeles, survive him, as do also a daughter and son-in-law, Mrs. and Dr. Ralph Lopez, a brother, Chaves X. Armijo of El Paso, a sister, Mrs. Harry Benjamin of Pasadena, Calif., and the wife of the deceased, Mrs. L. K. Armijo. Armijo was a

member of the Elks and the Veterans of Foreign Wars, and was booked for an oration at the forthcoming Rough Rider Reunion at Prescott, Arizona. Both houses of the legislature recessed Wednesday forenoon, February 19, to attend the funeral, which took place from St. Francis Cathedral, burial being in the National Cemetery.

GEORGE EDWIN REMLEY.—Lawyer, journalist, legislator, banker and rancher, George Edwin Remley died in Santa Fe on May 22, 1946. He was born in Iowa City, January 22, 1881, and attended Iowa schools, receiving his A.B. from the University of Iowa in 1901 and his LL.B. in 1905, in which year he was admitted to the Iowa Bar. He practiced law in Iowa City as a member of the firm of Remley & Remley, but ill health brought him to New Mexico in 1907 where he engaged in newspaper work, also purchasing and working a ranch in Colfax county. For a time he was cashier of the First National Bank of Cimarron. Appointed district attorney of the Third District in 1909 by Territorial Governor Mills he served in that capacity until the advent of statehood, being elected the first district attorney for the Eighth District, consisting of Colfax, Taos, Union and Quay counties, serving for five years. As state senator from Colfax County in the Ninth and Tenth State Legislature, and president pro tem, he occasionally served as acting-governor of the State. Remley was Republican county chairman for Colfax county for several terms until he moved to Santa Fe in 1934. He was counsel for the State Revenue Bureau, the Public Service Commission and State Tax Commission at various times and while living in Raton was a member of the law firm of Crampton, Remley and Phillips. He was a director and officer in the Cimarron Valley Land Company, the Cimarron Townsite Company, Charles Springer & Co., and the Charles Springer Cattle Company. As special master in Chancery, Remley adjudicated water rights of 3500 water users in the Pecos River system, evolving an original procedure necessitated by the case. He was a member of the Masonic order, the Elks, Beta Theta Pi, and Phi Delta Phi.

Remley is survived by his wife, Helen Taylor of Raton and a daughter Ann by that marriage, a daughter, Mrs. Alice R. Stallings of Santa Fe and a son Hilton Letts Remley by his first marriage to Leona R. Letts, now a resident of Colorado Springs.

Funeral services in Santa Fe were conducted by the Rev. Joseph Scrimshire, pastor of St. John's Methodist Episcopal church at the Memorial Chapel, with Mrs. Elsie Hammond at the organ, and Mrs. G. C. McClure singing Schubert's *Ave Maria* and *In the Garden* by C. Austin Miles. The active pall bearers were: Morris Wycoff, L. C. White, Jr., Robert Mason, J. J. Connelly, William J. Barker, and W. E. Hammond. The honorary pall bearers were: Supreme Court Justices Dan K. Sadler, Howard L. Bickley, A. H. Hudspeth, Federal Judge Colin Neblett, Judge Edward R. Wright, Judge H. A. Kiker, Congressman Antonio M. Fernandez, Dr. W. C. Barton, Dr. F. J. McClaffey, Judge Reed Holloman, George Neel, J. D. Mell, G. P. Harrington, and Dr. L. O. Hickerson. Interment was in Raton.

GEORGE R. CRAIG.—Prominent in his profession as well as in political circles, George R. Craig, for forty-five years a resident of Albuquerque, died at his home in the latter city, on Sunday evening, March 10, 1946. He passed away suddenly while seated in a chair, having but recently recovered from an illness of several months brought on by an attack of influenza. Craig was born at Hyde Park, Mass., on May 10, 1880, the son of Franklin B. and Ida E. Craig. He attended the public schools of Fort Madison, Iowa, and took a special course at Iowa State College, Ames, Iowa. Apprenticed as a machinist in the A. T. & S. F. shops at Fort Madison 1894 to 1899, he made railroading his career until 1904, being a machinist in the E. J. & E. Ry. shops in Joliet, Ill., in 1900, and in the A. T. & S. F. shops in Albuquerque in 1901, round house foreman for the El Paso & Northeastern at Alamogordo in 1903, and shop foreman for the A. T. & S. F. at Albuquerque, 1903 and 1904. He studied law in the offices of M. E. Hickey and Frank H. Moore and was admit-

ted to the New Mexico Bar on September 1, 1908, and to practice before the U. S. Supreme Court on April 13, 1921. During the first World War he was U. S. Appeal Agent in the selective service division for Bernalillo county. For a number of years, up to the time of his death, he was attorney for the Middle Rio Grande Conservancy District, associated with Stanley P. Miller. He had been a law partner of J. A. Miller until the latter's death in 1931.

Craig was a member of the Albuquerque School Board, 1904 to 1909, Police Judge from 1905 to 1916, district attorney of the Second Judicial District, 1916 to 1920, and U. S. district attorney 1920 to 1924 under the Harding and Coolidge administrations. He was Republican chairman for Bernalillo county and state chairman of the party for a number of years. His fraternal affiliations and services included past exalted ruler of Albuquerque B. P. O. Elks, past master, Temple Lodge No. 6, A. F. A. M., Ballut Abyad Temple of the Shrine, Ada Chapter No. 5, O.E.S., 32d degree Mason in the New Mexico Consistory, Albuquerque Scottish Rite Club. He was also a member of the Presbyterian Church and the Albuquerque Lawyers' Club. Craig was married on August 14, 1901, to Maud M., daughter of George and Frances Groves, who survives him. Rev. James G. Brawn officiated at the funeral services in Palm Memorial Chapel, and Temple Lodge of the Masons at the grave in Fairview Park. The active pall bearers were: Allen Tonkin, Stanley Miller, H. O. Waggoner, Claude Mann, Hubert Ball, and Roy McDonald.

THOMAS N. WILKERSON.—Death came to Thomas N. Wilkerson in a hospital at Nashville, Tenn., as the result of a crash landing of a training plane near Gallatin, Tenn., in which he suffered fatal injuries. He had been stationed at Barksdale Field, Louisiana, and was to have been released from the Army in the near future. He had attained the rank of Major. Wilkerson was born in Ripley, Mississippi, March 17, 1909, but was brought to Albuquerque before he was a year old. He graduated from the Albuquerque High School and attended the University of New Mexico for two

and a half years. From January 1928, to July 1933, he was a student at George Washington University in Washington, D. C., receiving the degree of LL.B. in the latter year. He was admitted to the New Mexico Bar in 1935 and was associated with Attorney J. G. Whitehouse in Albuquerque from 1936 to 1941, in which year he entered military service. At the time of his death he was legal officer in the office of the adjutant general at Barksdale Field. His wife, who with their eight year old daughter, Sidney, was visiting relatives in Shawnee, Okla., his mother, Mrs. Margaret Wilkerson of Albuquerque, and a brother, William, survive him. Wilkerson had been a member of the Kappa Sigma fraternity, the Albuquerque Lawyers' Club and the Albuquerque Country Club. He had planned to resume the practice of law in Albuquerque after his discharge from the Army.

FRED NICHOLAS.—After five years of illness, Fred Nicholas, one of the older members of the New Mexico Bar, and a native New Mexican, died in a hospital at Pueblo, Colorado, on April 8, 1946. He was born at Las Vegas, New Mexico, on July 25, 1883, the son of John A. Nicholas, a carpenter, and Elizabeth Nicholas. He graduated from the Florence, Colorado, high school on June 2, 1902, attended the University of Colorado at Boulder from the fall of 1902 to the spring of 1904 where he was manager of the football team. He received his LL.B. from the University of Michigan in June 1907. Nicholas practiced law in Denver, Colorado, from September 1, 1907, to November 1916, and then returned to his native state, being admitted to the New Mexico Bar in January 1917, having settled in Socorro the year before. He moved to Magdalena in 1917 and to Albuquerque in 1936. He was appointed district attorney for the Seventh Judicial District by Governor Larrazolo in 1920 and thereafter was elected on the Republican ticket four times in succession to the same post. He was a charter member of the Rocky Mountain Club and a Mason. He is survived by his widow, Julia I. Beyle, daughter of F. and K. Beyle, to whom he was married on June 16, 1909, at Colorado Springs. Also

surviving are a daughter, Catherine E., teacher in Washington High School, Albuquerque, a son, Jack F., instructor in the Massachusetts Institute of Technology. Mother of the deceased, Mrs. Elizabeth Nicholas, lives in Albuquerque.

JOHN HENRY SHETTLER.—Born at Clarion, Pennsylvania, May 23, 1877, John Henry Shettler died in Silver City, on October 25, 1946, in his seventieth year. He came to New Mexico in 1908 and to Silver City in 1912, engaging in his trade as a barber. He studied law in the office of Attorney C. W. McSherry and was admitted to the New Mexico Bar in 1916. Shettler was city attorney of Silver City from 1924 to 1934 and at the time of his death was referee in bankruptcy, a position he held for some fifteen years. He was a member of the Grant County Bar Association. He was not married and is survived by a brother Frank X. Shettler of Chicago and two sisters, Miss Minnie Shettler and Mrs. Ida Karwin of Cleveland, Ohio.

Funeral services were conducted from the Church of St. Vincent de Paul, high requiem mass being celebrated by the Rev. John P. Linnane. Interment was in the Catholic Cemetery, Silver City. Honorary pall bearers were: Joseph W. Hodges, W. D. Murray, Robert Jackson, James S. Ryan, Harrison Schmitt, Clyde R. Altman and W. S. Huston. The active pall bearers were: Frank Veseley, J. A. Turner, William H. Bard, Ben Shantz, Judge A. W. Marshall and Robert Everhard.

NATHAN L. STEDMAN.—Only 32 years of age when he died in St. Joseph's Hospital in Albuquerque, on November 15, 1946, Nathan L. Stedman was born at Halifax, North Carolina, on March 19, 1914. He attended Georgia Military Academy, College Park, Georgia, 1927 to 1931, Shenandoah Valley Academy, Manchester, Virginia, 1931 to 1933, and the University of Florida, Gainesville, Florida, 1933 to 1935. He came to Albuquerque from Gainesville in 1937 and completed his studies at the University of New Mexico, 1937 to 1939. He received his law degree in 1942 from Harvard Law

School. Admitted to the Colorado Bar in 1943 he was with the law firm of Bannister and Miller in Denver until he returned to Albuquerque in October 1943 where he was with the law firm of Dailey and Rogers. Stedman was a member of the New Mexico Bar Association, the Albuquerque Lawyers' Club, the American Bar Association, Pi Sigma Alpha and Sigma Chi and of the First Baptist Church in Albuquerque. He is survived by his widow and three daughters, Catherine, Martha and Sharon, and by his mother, Mrs. N. L. Stedman of Gainesville, Fla. After services in Albuquerque by Revs. B. I. Carpenter and V. F. Forderhase, the remains were taken to Gainesville, Florida, for burial.

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PALACE OF THE GOVERNORS, SANTA FÉ

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BEFORE THE COMSTOCK, 1857-1858 MEMOIRS OF WILLIAM HICKMAN DOLMAN

Edited by AUSTIN E. HUTCHESON*

*Introduction*¹

WILLIAM HICKMAN DOLMAN was a pre-Comstock Nevada pioneer, an enterprising leader of miners in Gold Canyon during the 1857-1858 winter, between the deaths of the ill-fated but prophetic Grosh brothers in 1857 and the main silver lode discovery at the Ophir in Virginia City, in June of 1859. He then was engaged in business at Gold Hill for a decade after the discovery, and was early recognized by his fellow pioneers as a reliable witness and as a man of trustworthy character.

His sketch which follows of early mining days in the Comstock and nearby Gold Canyon areas would seem to be a notable document, resurrected as it were from the limbo of forgotten things at this late date, and destined hereafter to rank as one of the chief primary sources on its subject—the real rather than the mythological history of the early Nevada Comstock area.

* Professor Hutcheson is a member of the Department of History, University of Nevada.

1. Acknowledgments are due to the University of Nevada Research Committee and Publications Committee for financial aid toward research as to the Dolman memoir's authenticity and value, and for publication as a university bulletin. Acknowledgments are also gratefully made to the Henry E. Huntington Library and its staff for aid and courtesies; to the University of California Library and its Bancroft staff; to Mr. Howard Jay Graham, of the Los Angeles County Law Library; to Miss Katherine Anderson of the Portland Public Library; to Mrs. Mary North Shepard of Pasadena; and above all to Dr. Annie Dolman Inskeep, now of La Jolla, California.

Dolman is endorsed by name in J. Wells Kelly's *Second Nevada Directory* of 1863 and in Eliot Lord's later federal publication on *Comstock Mining and Miners*, of 1883, as an informed and accurate witness, at a time when many living contemporaries could have challenged any erroneous statements; and much of his story is paralleled in the basic accounts by "Dan De Quille" (William Wright) and Henry DeGroot, and in the histories of Nevada by Myron Angel and H. H. Bancroft.² These together make up our best early sources, even if not all primary accounts, of the Comstock's origins. Moreover, the late Grant H. Smith, the most thorough and accurate recent authority on the Comstock, also accepts Dolman as a qualified and authentic witness. No one man can recollect or objectively record all minor details in complete agreement with versions of all other witnesses, but so far as we can today judge by the parallel corroboration of other records, Mr. Dolman's account must merit the most respectful consideration by all students or readers of Nevada's mining history, a sketch notable for both accuracy and readability. It supplies a missing link as to events between 1857 and 1859, and throws new light upon the most important event in Nevada's history—the Comstock Lode discovery.

William Hickman Dolman³ was born on a Muskingum County, Ohio, farm on January 5, 1830, of English ancestry transplanted to Pennsylvania before the Revolution, in which

2. J. Wells Kelly, *Second Directory of Nevada* (Virginia City, 1863), 4, 16, 33, 40, 153; E. Lord, *Comstock Mining and Miners* (Washington, 1883), 15-34; Dan De Quille, *History of the Big Bonanza* (Hartford, 1876), 26 ff. (a new edition of De Quille is soon to appear with an important introduction by Oscar Lewis); Henry DeGroot, "Comstock Papers," in *Mining and Scientific Press*, Sept. to Dec., 1876 (DeGroot's Scrapbook is in the Huntington Library); M. Angel, *History of Nevada* (Oakland, Thompson and West, publishers, 1881); H. H. Bancroft, *History of Nevada, Wyoming and Colorado* (San Francisco, 1881); Grant H. Smith, *History of the Comstock Lode* (Reno, 1943), and his 1943 letters; V. P. Gianella, *Geology of the Silver City District* (Univ. of Nevada Bulletin, Vol. 30, No. 9, 1936); E. M. Mack, *Nevada* (Glendale, 1936); A. E. Hutcheson, "Early Mining Districts of Nevada's Comstock," *The Historian*, Vol. 8, No. 1, 1945, 5-18. These will be cited hereafter by author's name only.

3. Information upon which this sketch is based is chiefly drawn from the private Dolman family papers, now at La Jolla in possession of Dr. Annie Dolman Inskeep, and augmented or checked from the following: *Dolman Compendium*, P. H. Dolman, comp., A. D. Inskeep, ed. (Denver, 1940), 22, 49-52; Virkus, *Compendium of American Genealogy*, VII, 802; J. W. Kelly, *Second Nevada Directory*, (1863), 4, 16, 33, 40, 153:

his forebears fought. His boyhood was spent chiefly in Zanesville where he was schooled in the "academies" of that day. He was a precocious boy, noted from age of six for ability to recite long poems from memory. Deciding against the study of medicine, he left school at seventeen to enter business as a store clerk. In 1847 he left Ohio for St. Louis, taking a steamer from Cincinnati. At Louisville the steamer was boarded by Jessie Benton Fremont, on way to California under escort of the scout Kit Carson, to join her "Pathfinder" husband. The big-eyed youth was surprised that "so quiet and mild a man could be a great Indian fighter"—gentle, low-spoken, and smaller than average in size. "When ten years had passed over my head I knew much better that size and bluster counted only in a drunken brawl or gouge-eye fistfight" on the frontier.

Employed in a St. Louis store from 1847 to 1849, at the outbreak of a cholera epidemic he moved to Brunswick, Missouri, until 1852, meantime suffering chronically the chills and fevers of the malarial "ague" which sent so many emigrants overland aching for California's sun. Caught also by the gold fever, he started west in late spring of 1852, then aged twenty-two and at the head of his own outfit consisting of a covered wagon, two yoke of oxen, a riding pony and four cows, one giving milk, and taking along two passengers. He was frail from malaria and considered a poor risk for the hard overland journey, but had decided, "I go, live or die." Indians killed his horse, his wagon-bed he gave for use as a coffin, and his teamster decided to turn back, but despite all vicissitudes he arrived safely at Sacramento over Carson Pass by October 8, with two other Missouri wagons joined early on the trail.⁴

Lord, *Comstock*, 33-4; Angel, *Nevada*, 201, 251-2, 255, 479; Carson City *Appeal*, March 6, 1920; Oakland *Tribune*, Oct. 17, 1920; obituaries in Portland *Oregonian*, *Journal*, *Telegram*, Nov. 27-29, 1913, and related items, Portland Library; Oregon vital statistics; Mrs. Lola Childs and others of St. Helens, Oregon; Gold Hill, Carson City and Pioche Episcopal Church Records, thanks to Bishop Wm. F. Lewis; Nevada, Missouri, Oregon, and California Oddfellows Records, thanks to E. C. Mulcahy, Paul Giraud, and Frank Macbeth; Oregon Gazetteers, 1890-94.

4. For comments on this route see A. E. Hutcheson, "Overland in 1852; the McGuirk Diary," *Pac. Hist. Rev.*, XIII (Dec., 1944), 426-432 and notes thereto. One of the best accounts of the improved route, as of 1861-5, and other important new light on early Nevada, is found in the papers of John W. North at the Huntington Library.

From 1852 to 1857 he mined and prospected in California, at Diamond Springs, Dead Man's Hollow, Prairie Diggings, and Wall's Diggings. Late in 1853 he bought a claim at Western House at which he and partners cleaned up from \$8 to \$40 per day until the next spring when the water gave out. In 1855 he mined in Johnson's South Canyon, in 1856 on the American River fifteen miles east of Placerville.

As told hereafter in his memoir, "Before the Comstock," the winter of 1857-8 was spent in Gold Canyon, just below the later Comstock Lode. His company—which included "Big French John" Bishop, "Kentuck" Osborn, locater of the Kentuck mine, V. A. Houseworth, De Quille's blacksmith recorder, and others—built Nevada's first crude arrastra, mined and refined the first quartz and obtained the first bullion, unless the Groshes refined a small amount which is unproved. Silver they saw but some thought it lead, and no report came back from the sample taken to Sacramento by Major Ormsby. The Groshes seem to deserve credit for first identifying silver in the area, but not for locating the Comstock Lode itself.

Dolman himself drew up the first laws for Nevada's first organized mining district, called "Columbia District," which included Virginia City, Gold Hill, Silver City, Flowery and nearby areas. Also he was first recorder, keeping first record book of claims, including one filed on or near the Comstock Lode for "Old Virginia" Finney, the later sale of which is related by De Quille.

After the seeming failure described in the memoir, he and some of his company went to the east fork of the Walker River and prospected there, returning to California by way of Forest City, Marysville, Grass Valley, Jackson and Volcano. In the spring and summer of 1859, silver was struck

North, often maligned by Senator W. S. Stewart, was Nevada Territorial Surveyor and Supreme Court Judge, founder of Minneapolis and of Riverside, a leader in the state constitutional conventions of both Minnesota and Nevada, and as a Minnesota delegate to the 1860 Republican Party Convention was an active worker for Lincoln, who then gave him two Nevada appointments. The North papers concerning Nevada are now being studied by the present editor, for early publication. See also Mary North Shepard, "The Norths Go West" (unpublished manuscript); Smith, *Comstock*, 20n; Lord, 71.

in the Comstock Lode four or five miles from his old arrastra workings of the 1857-8 winter. He hoped his old claims there would still be valid, and resolved to return there early the next spring. In March of 1860 with Jack Colehower he started over the Sierra for Washoe, and after severe exposures and hardships arrived at Gold Hill. He held a latent fear that his old Johnstown records, in which he recorded the claim for James Finney, might be in conflict with the later locations. He had been in California when the second mining laws were enacted. He found that his old records had been kept out of sight for nearly a year by John S. Childs, probate judge of Carson County by appointment from Utah, with whom he had left them. All of his quartz mine locations near Devil's Gate had been "jumped" and relocated, and he found himself a "nobody" when he returned.

He took up a few town lots in Gold Hill and, the better to hold possession, established a wholesale and retail hay and grain yard and livery barn with a partner, George G. Clark, which did a flourishing business as a miners' supply center. Soon afterward the sheriff also made him receiver for the "What Cheer House," a hotel owned by Jake Colburn.⁵

At the outbreak of the Civil War Mr. Dolman was so crippled by rheumatism brought on by exposures that he had to use two crutches. Failing to get relief from Steamboat Springs hot baths or at Placerville, in the summer of 1863 he went east by stagecoach, able to walk now with aid of a gold quartz-headed cane given him by Nevada's first Odd Fellows' Lodge. After medical treatment he visited his parents and his brother, an army officer at the front, but was barred from service himself as an 1863 4-F. He continued on to New York and there took steamer via Panama for California.

On this voyage he met and courted his future wife,

5. Hay was an important commodity on the Comstock, as De Quille often emphasized. See Twain, *Roughing It* (Hartford, 1872), 296; R. G. Lillard, "Dan De Quille, Comstock Reporter and Humorist," *Pac. Hist. Rev.* (Sept., 1944), XIII, 252; Twain, *Works*, vol. 8 (New York, 1913), II, 6. Price for hay at Virginia City in 1860 was 50c a pound, the same as for coffee, barley was 40c, the same as for bacon; flour was \$75 per hundredweight; De Quille, 104. For hay field claims, G. H. Book A, pp. 13, 14.

Christine Caroline Hoerner, who was coming to teach at Copperopolis, California, and journeyed under the care of the Reverend and Mrs. Ozi W. Whitaker. Then Episcopal rector for a group of Nevada towns including Carson City, Gold Hill and Virginia City, Whitaker was later Bishop of Nevada and of Pennsylvania, and was inspiration for the novel *In the Bishop's Carriage* by Miriam Michelson, herself reared on the Comstock with her famous brothers, Albert, the Nobel Prize physicist and Charles, Democratic party publicity head. The bishop was often seen riding at break-neck speed on the fastest horses of the Virginia City pony express line, from parish to parish, his clerical robe billowing out behind.⁶

6. The Gold Hill Episcopal parish and vestry records give a good picture of church problems in a frontier mining town. The Rev. Franklin Rising, Twain's friend and brother of the local judge, was first rector, from July 8, 1862 until October 18, 1863 when Ozi W. Whitaker arrived. Whitaker resigned, September 2, 1865, to go east. From 1867 to 1870 Whitaker was rector at Virginia City, officiating at Gold Hill afternoons. Dolman served on the vestry with John D. Winters, A. B. Paul, R. S. Day, J. C. Corey and A. W. Hale, among others. Governor Nye and H. M. Yerington were vestrymen of Carson City parish in 1863 when the Dolmans were married there.

The first Episcopal service at Gold Hill in 1862 was held in a theater at rear of a "drinking and gambling saloon." A new owner refusing use of premises, the school house was used, then the I. O. O. F. hall. By December, 1864, a \$9,000 church was built, in spite of "business disaster." The interest not paid on \$3,500 of the church debt, the building was sold at sheriff's sale to the noteholder, but was redeemed within six months' grace period by \$3,071 currency (\$2,162 gold value) raised by Whitaker in the East, plus \$2,934 raised locally by a "Fair and festival," and a \$1,300 rectory was purchased. In 1870 it is lamented that with seats for 150 in the "neat brick church" only a score attend. "We have no Sabbath here and Mammon rules the day." In 1886 the brick church was abandoned and "services held in a building on Main street formerly a gambling room and saloon, purchased and adapted."

In an item entitled "Sunday on the Comstock" the *Virginia City Chronicle* (quoted in *Min. & Sci. Press*, Oct. 28, 1876, p. 287) tells of the fun it would be to guide a puritan stranger from Massachusetts through town on Sunday evening, past 130 saloons on C Street, lights glaring and doors wide open to keeno games, brass bands inviting to the melodeon. Lounging, laughing, swearing crowds are on the street corners, to say nothing of the sights down the hill. "What a chill of horror would they send through the veins of the staid New Englander. Would not his established ideas that the earth was made for the children of the Lord, and that the people of New England are His children, be somewhat confused?"

"Are we in America?" he would exclaim.

"No, we are on the Comstock." Work is going on in the mines, horse racing and dog fighting at the race track, gambling in the saloons, lounging on the streets. Proud of it or regretful, we cannot alter the existing condition of things if we would. "But we can send any New Englander back to the blue laws and bitter Sabbath, with the valuable knowledge that although Boston may be the hub of the universe, the Comstock is a very lively spoke."

Professor William Miller, in his forthcoming study of the Virginia City Theater, will modify existing ideas as to Comstock recreations.

Copperopolis sought elsewhere for a teacher, for on the voyage Miss Hoerner and Mr. Dolman became engaged, and no doubt encouraged by the zealous rector with an eye to gaining an asset for his parish, were married in the rectory at Carson City, November 5, 1863. Mrs. Dolman was a woman of ability and charm, and in every Nevada town where she lived the Episcopal bishop called her his right hand.

In 1868 Dolman and his partner invested their savings, along with some money Mrs. Dolman had inherited, in fitting out a mule train and hauling lumber and other building materials to Treasure Hill, White Pine county, Nevada. Two miles from Hamilton, this place was about 9,000 feet above sea level. The two-story building they built here rented for over \$900 a month, but in less than two years sold for only \$900. Treasure Hill was a flash-in-the-pan mining town. The mines were very rich near the surface but the lode soon "petered" out, never to be found again. A tunnel was run into the mountain from Hamilton but the ledge could not be found.

During the boom Dolman's family had gone to New York, but when deflation came they returned, and about 1870 a move was made to Pioche, a new and promising mining camp in Lincoln County, Nevada. Here he established a very successful wholesale and retail business which handled large amounts of hay, grain, and other products that the Mormon farmers raised. This business was sold at a large profit and in the spring of 1876 the family moved to Oakland. After a year or so Dolman and his Pioche partner, Boone, established a wholesale and retail grocery in Bodie, California. The family never lived there, remaining in Oakland, and the business was sold when Dolman sensed that Bodie would soon pass the zenith of its prosperity.

In 1880 he went to New York to seek capital for a mining venture and spent part of the year in England and France. After his return, he went to St. Helens, Oregon, about 1881, where he bought a general store, a wharf and other property. He continued to live in St. Helens until a fire of September 14, 1904, which burned most of the town.

He then bought a home on the Heights in Portland where he lived until his death in 1913. He left an estate of moderate value, including 1,100 acres of farm and timber lands in Oregon and Washington.

He always retained his interest in mining, and was given a commemorative diploma for his "valuable services" with the Mining Department of the Lewis and Clark Centennial Exposition held in Portland in 1905, showing the high regard in which he was held in mining circles even at the age of seventy. At various times he studied the geological structure of the Sacramento valley and came to the conclusion that ages ago when the sea reached to the foothills of the Sierras, streams washing down the hillsides carried gold which settled under the silt which now forms the fertile valley lands. He made two attempts, one about 1879 and again about 1906, to sink shafts and prospect for gold under the floor of the valley. Nothing came of these attempts.

In his last years he became much interested in astronomy study and owned his own telescope at his Portland Heights home. His unusually good memory remained to the end, and he could quote long passages from Shakespeare. In the various mining camps he was usually the one who wrote up the hand-written newspaper that went the rounds. This was no doubt an aid to his memory in writing his memoir, along with other autobiographical recollections, toward the end of the century.

Dolman joined the Odd Fellows Lodge at the age of twenty-one at Brunswick in 1851, transferring to Sacramento lodge in 1852, and to the Comstock's Wildey No. 1 lodge in 1862, of which he was Noble Grand in 1863-4. He held the same office in Gold Hill's Parker No. 13 on its institution in 1868, and was also Grand Warden of Nevada grand lodge on its declaration of independence from California in 1867-8. He was baptised an Episcopalian and served as junior warden in the vestry of Gold Hill's St. John Church, almost from its organization in 1862.

At varying times, while continuing his mercantile business, he was county superintendent of schools in Lincoln county, Nevada, 1875-6; treasurer of Columbia county, Ore-

gon, one term; and for a number of years postmaster of St. Helens. His second wife by a marriage in later years was Nancy McBride Morse, of a prominent Oregon family including U. S. Senator George McBride, a brother, and editor Alfred Holman of the Portland *Oregonian*, San Francisco *Argonaut* and *Bulletin*, and Oakland *Tribune*, a nephew. There were no children by this second marriage.

At his death, which occurred in Portland on November 27, 1913, Mr. Dolman's age was just short of eighty-four. He was survived by his widow and by all of his four children: Annie Dolman Inskeep, Ph.D.; William Henry Dolman D.D.S.; Percival Dolman, M.D.; and Caroline Dolman (died March 28, 1943). The first three were born in Nevada.

Before the Comstock, 1857-1858

In October, 1852, en route to California with an ox-team and an emigrant train, my way lay through what is now western Nevada and up the Carson river across the mouth of Gold Canyon. There I saw gold mining for the first time. From there we went through Eagle Valley (where Carson City now stands), up through Carson Valley to the first mountain stream that cut deep into the mountain range, called West Carson River, and thence across the range to California by the "Carson Pass".⁷

In the autumn of 1857—five years later—being within a day's ride of the Carson Valley country, I crossed the summit to look again on that country; and more especially to examine Gold Canyon for future mining operations.

Forming a favorable opinion of that mining region I returned to California and organized a trading and Mining Company to proceed with goods, tools and supplies to that locality, before the snows would block the mountain roads. Our principal object was to construct a bed rock flume in Gold Canyon for placer gold mining purposes. Two weeks later we started with all our possessions loaded in two wagons drawn by six yoke of cattle. Ours was later called the "Placerville Company"; at the time it was unnamed.

7. See note 4, above.

I furnished most of the money, business, and mercantile experience, all of which were somewhat limited.⁸ A. L. Johnson, a carpenter and an active contractor, and John A. Osburn, furnished a lot of goods taken on slow debts. V. A. Houseworth furnished one ox team and G. A. Lashbough furnished another. John Bishop was taken along free of charge by our company he "being an excellent hand to work." He is the "Big French John" of Comstock days.

On the first of November we started bright and early. The day was most lovely, every step was upward and onward. Strange how full of hope we all were, starting up that mountain road, through a forest of giant pines whose foliage often obscured the sun and gave out a pleasant, refreshing, resinous fragrance.

Toward noon the sun shone less brightly, we noticed the sky becoming overcast, and soon we were in a fine misty rain. Every effort was now made to pass over a steep new road before the rain made it too slippery for the oxen to maintain a foothold. Before we had reached the top of the ridge that divides the south fork of the American river from Silver Creek fork, night overtook us. We knew of a woodman's unoccupied cabin some eight miles farther on, in which we could be sheltered for the night, if we could reach it.

The rain that had begun falling so mildly, with scarcely a breath of air, now changed to a terrific howling mountain storm. It was proposed that I should go ahead and, if pos-

8. The personal modesty of Dolman here should be noted by those who might think any of his later statements unjustified. Johnson left the area shortly, as perhaps Lashbough did also; I can find no mention elsewhere of either man. Osburn (known as "Kentuck" and after whom the Kentuck Mine was named) and John D. Winters on June 22, 1859, made a contract for building two arrastras, worth \$75 each, in which to work the ore, together with supply of two horses or mules to operate them, and in return became joint and equal owners of the Ophir with Comstock, Penrod, O'Riley and McLoughlin. Bancroft, 86-101; Angel, *Nevada*, 57; Smith, *Comstock*, 9; De Quille, 83; Gold Hill Records, June 23, 1859, Book A, 6. Bishop, with Finney ("Old Virginny"—known as Fennimore to California sheriffs), Henderson and Yount made the discovery at Gold Hill on January 28, 1859, which later proved to be the south end of the Comstock Lode and thus antedated by about five months the discovery of the Ophir at the north or Virginia City end. Lord, 35; De Quille, 42; Angel, 31, 55-7; Smith, 5-9; Kelly, 16; DeGroot, *Min. & Sci. Press*, Oct. 14, 1876, No. 7, 244-9; "Relics of the Past," *Virginia Evening Chronicle*, August 30, 1878. Houseworth was the "village blacksmith" and recorder for the Gold Hill or second quartz district in the area. Osburn and Houseworth were partners in 1859. Gold Hill Records, Book A, pp. 1-30; Hutcheson, in *Historian*, 1945, 5-18; De Quille, 61-3; Lord, 53. (Lord, 44, says "John A. Houseworth.")

sible, light beacon fires to make it safer traveling with the teams in the night. Carrying an axe, and at a double quick run, I pushed forward for that purpose. At an advantageous point I found a large pine tree into which successive fires had burned out a hollow space large enough to have sheltered our whole company, and hewing off some chips, fat with pitch, was ready to light a fire. On looking for my box of matches when ready, horror, they had been left in the wagon.

At short intervals, gusts of wind, fierce as a tornado, followed each other like the waves on a troubled ocean. As each gust went by, for a short interval the monster pines trembled and gave out the faint tinkling sound of myriads of little bells. The sound probably was produced by the action of the wind on the pine leaves. The forest was one weird Aeolian harp, not loud, but sweet beyond description, I had never heard the like before, nor did I ever hear it again after that night.

Mechanically feeling again in my pockets, I found one lone match. Here was a ray of hope; but what were the chances of striking fire with one lone, damp match in such a gale? Fortune favored me though, and soon the pitch pine fire was a blazing success. So intense was the feeling wrought up by this incident that I seldom willfully wasted a match ever after.

For some unknown reason it did not become dark, but remained more like twilight. In a short time the teams came up, and more of the party went on to light other fires as required, and to build a roaring fire in the woodman's cabin.

Before ten o'clock, when we reached the cabin, the storm had spent its fury. The unyoked oxen were munching wild peavine, and we, gathered around a large blazing fire, were baking bread, frying meat and making coffee. None for a moment thought of looking back. One thought only was uppermost with each one, would this storm deposit deep impassable snow before we could cross the summit range? That was easily possible, as eight or nine days' travel were yet ahead of us before we could hope to pass the highest point. Not much was said of this, but an under current of

repressed chagrin was noticeable in strange contrast with the buoyant start of early morning.

The conversation started on religious subjects and the Bible as being Holy Writ. One of the party flatly denied his belief in anything Holy, and when another asked him where he was raised that he could so express himself, the first quarrel in the company began. It, however, was not the last.

During the next ten days it stormed some part of each day, but we kept pressing forward. Sometimes at night, without shelter, we cut evergreen boughs, laid them on the snow and spreading blankets on that, slept the sleep of tired men. And thus we toiled on and upward day after day, encountering difficulties and overcoming them, exposing ourselves as men seldom do except in war; laying the foundation for rheumatism that must yet be paid for in aches and pains.⁹ At last we could look down into Carson Valley where the carpet of grass was now browned by the frosts of autumn. With worn out teams and much cooled ardor we slowly journeyed through the valley, through the little hamlet of Genoa, arriving at old Johntown in Gold Canyon on a day and date now forgotten (probably about the middle of November 1857). No rain had fallen yet in the Gold Canyon region, and in fact we had no rain or snow there that winter.¹⁰

During the first evening we were in Johntown, John Bishop, "Big French John," visited one of the Trading Posts, got crazy drunk and cleaned out all the Dutchmen in town. They soon returned in a mob, with "Dutch Nick" Ambrose as leader, broke in the door, and beat Bishop with clubs and stones until he fell to the floor.¹¹ Then Nick kept on pound-

9. John A. ("Snowshoe") Thompson, the mail and express carrier by ski of the 1850's, was more hardy, more experienced, or more fortunate than most in ability to withstand winter cold in the Sierras. See De Quille in *Overland Monthly* (2d Series), Vol. 8, 419-435; Lord, 21; Angel, 103.

10. Studies by George Hardman, Nevada State Conservationist, and Cruz Venstrom, based largely on Truckee River run-off and tree growth studies for nearby areas, find "indications point to near drouth conditions over this area during these three years, and that the Virginia City area could have had one or more very dry winters," 1855-1858.

11. "Dutch Nick" Ambrose's tavern was the locale of the goriest murder hoax ever committed in Nevada by the pen of Mark Twain. R. G. Lillard, "Contemporary Reaction to 'The Empire City Massacre,'" *American Literature* (Nov., 1944), Vol. 16, No. 3, 198-203; Ivan Benson, *Mark Twain's Western Years* (Stanford University, 1938), 91-92; Angel, 38.

ing and beating him with his fists until Bishop trumpeted "enough" like a conquered elephant. This battle gave Bishop more notoriety than all the other members of our company ever had. In fact, he is about the only one of us ever referred to by Comstock histories that have come under my notice.¹²

We occupied a miner's dug-out or cabin temporarily, and four of the party started with the teams to procure lumber at a little saw mill, in Washoe valley.¹³ They cut and hauled the logs to the mill, helped saw the lumber and in three or four weeks we were sheltered by our own house. There was no water at that time of year for mining purposes, and on being told that water was an uncertain factor

12. Dolman himself, Osburn, Bishop and Houseworth are all referred to in works by Kelly, Lord, Angel, DeGroot, and De Quille; see notes herein. De Quille, pp. 52-53, states that Bishop (who was still working as a miner at Gold Hill in 1876) built the first Comstock arrastra, which started up a few days before that of Osborn and Winters at the Ophir. Bishop located the Central No. 1 mine, later part of the California mine of the Bonanza firm or "Big Four" (Mackay, Fair, Flood and O'Brien). Gold Hill was discovered by Bishop, Finney, Henderson and Yount; Lord, 35; De Quille, 42. Bishop sold his adjoining Central No. 1 claim to the California company on August 15, 1859 (G. H. Bk. A, p. 38) but in 1876 based a nuisance suit against the Big Bonanza firm on this sale; DeGroot, No. 11, *M. & S. Press*, Dec. 9, 1876, p. 384. Bishop had claimed 150 feet between "Penrod and Co." (the Ophir) and H. B. Camp's 150 feet. Bishop, Houseworth and Camp filed the "Boomerangus" as partners, G. H. Bk. A; p. 9. Same, p. 11, Bishop, Camp and Rogers filed the Yellow Jacket; same, p. 11, next to it Houseworth filed for himself the Crown Point.

DeGroot (*Min. & Sci. Press*, No. 7, Oct. 14, 1876, p. 249) states in an item, "Unhappy effects of suddenly acquired wealth on the marital relationship," that Osburn sold his Ophir interest to Donald Davidson and Gen. Allen and died of a fractured limb, compounded by "unreciprocated attachment unwisely cherished for a young woman," at Silver City in 1864. Since "partial exile is apt to render men all the more susceptible to the tender passion," many Washoe pioneers have "given way to this weakness." Several were "cajoled out of their money, and sometimes into hasty and ill-advised wedlock and that not always with women of the most exemplary and deserving kind." Examples listed include McNulty, Hastings, Bacon, and "poor Berry," whose spouse, "the supernumery wife of a Washoe Mormon who had unsealed and set her adrift," robbed Berry and left for Utah.

Mrs. Cowen did the reverse toward Cowen, before becoming Mrs. Sandy Bowers; Mack, 156, 414. Comstock, O'Riley and Plato were others unlucky at romance; De Quille, 77-81, 94; G. Lyman, *Saga of the Comstock*, 36. Comstock briefly acquired a wife by bill of sale from her husband, but although left locked in a hotel room, she soon deserted him for a handsomer rival, who helped her escape through a window.

O'Riley, unstable mentally, by forged letters was incited to a duel over a lady's hand by Johtown jokers as a hoax. Plato was obliged to marry a lady of ill repute to recover his mine; she long out-lived him to enjoy its income.

13. This was probably the mill built by Mormon Elder, and Judge, Orson Hyde, which gave cause for the famous 1862 curse upon Nevada gentiles; Angel, 40-41; Bancroft, 73, 79-80. A little-known portrait of Hyde is in the Douglas County Court House, presented by Hyde's son, at time of Pony Express celebration in 1930's.

at any time that far east of the Sierra Nevada range, we did not begin work on the proposed bed rock flume, and, in fact, never did build it. Johnson and Osburn kept our company well supplied with wild meat, mostly mountain sheep, so at least we ate well.¹⁴

During the winter of 1857-8, Johntown contained besides our company, best known as the "Placerville Company," Ormsby's¹⁵ store, operated by S. A. Swager; Job's store, kept by H. B. Camp; John Childs' store, kept by Mart M. Gage; one kept by Harris Jacobs and Lal Weil; one by Nicholas Ambrose, "Dutch Nick"; and one saloon by Gray and McBride. The largest of these stores did not have over two or three tons of groceries; some of them less than half a ton. Lyman Jones, wife and girl baby; Will Dover, wife and little boy; Mrs. Cowen, afterwards Mrs. L. Sanford Bowers (wife of the later famous "Sandy Bowers"); and "Dutch Nick" and his wife were the only families in Johntown that winter. Princess Sallie Winnemucca, her sister Marie, and their brother Natchez, afterward Chief of the Piute tribe of Indians, spent part of the winter there.

Of the miners, these I particularly remember:¹⁶

14. The rapid killing off of the wild game by the whites, and the abduction to Williams Station of two Indian girls, were the chief causes for the Piute Pyramid Lake Indian War of 1860; De Quille, 29, 124; Lord, 67-71; "Princess" Sarah Winnemucca Hopkins, *Life Among the Piutes* (Boston, 1883), 70; DeGroot, *Min. & Sci. Press*, No. 5, Sept. 2, 1876, p. 160; Kelly, *2d Nev. Dir. (1863)*, 49.

15. For Major Ormsby, see De Quille, 27; Ormsby was agent at Genoa for the Pioneer Stage Company, a founder of Carson City, in the Nevada county now named for him, and was killed by the Indians while leading the whites in 1860 in the first battle of Pyramid Lake; Angel, 104, 161; Bancroft, *Nevada*, 209; Lord, 67-71; Mack, *Nevada*, 179, 241, 304-7, 340.

For Job, Angel, 36; De Quille, 27, 30.

For Camp, DeGroot, "Comstock Papers," No. 8, in *Mining and Sci. Press*, Nov. 4, 1876; Lord, 58, 63; G. H. Book A., p. 11.

For Gage, Angel, 31; Bancroft, 71.

For Jacobs and Weil, Hutcheson, *Historian*, VIII, No. 1, 16; 14 *Federal Cases, Circuit and District*, case 7827, pp. 615-39, Kinney v. Consolidated Virginia; Angel, 571.

For Ambrose, see note 11, above.

Mrs. Cowen, later Mrs. Sandy Bowers, is the heroine of two novels, *Eilley Orrum* by Swift Paine and *City of Illusion* by Vardis Fisher; Mack, *Nevada*, 156, 171, 207, 414; Bancroft, *Nevada*, 171; G. H. Book A, p. 28.

For the three Indians, see Lord, 67; Hopkins, *Life Among the Piutes*, 70.

16. For Comstock, De Quille, 46, 82-4, his own letter at p. 82; Angel, 56; G. H. Book A and Virginia Book A.

For Finney, De Quille, 87, who praised his industry between drinks; Kelly, 153.

For O'Riley, De Quille, 94; DeGroot, No. 6, *Min. & Sci. Press*, Sept. 30, 1876, 224; G. H. Book A, p. 10.

Henry P. Comstock, an industrious visionary prospector, though little more than half-witted.

James Finney, "Old Virginia," frontier hunter and miner, a man of more than ordinary ability in his class, a buffoon and practical joker; a hard drinker when he could get the liquor, and an indifferent worker at anything.

Peter O'Riley, half-witted and "half-cracked," lazy and stupid.

Joseph Kirby, sober and honest, but indolent.

John Walker, violinist, a Mormon and violent partisan.

Joseph Webb, a Mormon, and a miner, quite well informed for his class; the principal writer for the local

(Gold Hill Records, Book A, lists the claims of most of these men. See *Historian*, VIII (1945), No. 1, 5-18.)

For Kirby, DeGroot, *Min. & Sci. Press*, No. 2, July 29, 1876, regarding his hazy claim to the Ophir ground; Angel, 56; Kelly, 153, 306; Smith, 6; G. H. Book A, p. 12, for cedar stump later removed by Stewart during lawsuit.

For Hale (of Hale and Norcross), DeGroot, No. 11, *Min. & Sci. Press*, Dec. 9, 1876, p. 384, states that he was the only Mormon to secure a Lode claim. He returned to Salt Lake in 1860.

For Webb, De Quille, 29, used by Bancroft, 72. On Webb lawsuit, Hutcheson, *Historian*, VIII, No. 1, 15-16. Also G. H. Book A, p. 7.

Houseworth is called "the village blacksmith" at Gold Hill by De Quille; see also Gold Hill Book A, 1-30. Ed. C. Morse succeeded him as recorder on June 27, 1859; Houseworth and Osburn filed "Notice of copartnership," Book A, pp. 7-8. Osburn sold him his blacksmith tools and shop.

Corey helped discover Aurora, in Esmeralda county, famous from Twain's *Roughing It*. Also G. H. Book A, p. 10.

One "Old Frank," a Mexican, was an associate of the Grosh brothers, who named a mine for him; Angel, 52; Lord, 27; Mack, 200.

For Sides and Jessup, DeGroot, *Min. & Sci. Press*, 1876, No. 13, p. 420. It is likely that O'Riley and McLoughlin first struck the Ophir pay-dirt by jumping the ground during Jessup's funeral. Sides' mine became part of the Consolidated Virginia; Lyman, *Saga*, 362.

For indictment and release of Sides, see Judge Frank Norcross in Sam Davis, *History of Nevada* (Reno, 1913), I, 277; *Enterprise*, June 20, 1875.

For Berry, DeGroot, No. 7, Oct. 14, 1876, *Min. & Sci. Press*, p. 249; G. H. Book A, 12; note 8, above.

The L. D. S. Church Historian at Salt Lake City finds no record of a Bishop O. S. Lyford. (Letter from Joseph Fielding Smith.)

For Vignot, G. H. Book A, p. 25, 29; at p. 13, his claim for a hay field; also see Angel, 571; Bancroft, 109. G. H. Book A, p. 14, A. Cowen also filed a hay field.

For Galphin, Angel, 51; Mrs. Ellis states that Galpin (sic) was a Grosh partner.

For Williams, De Quille, 30; DeGroot, in *Min. & Sci. Press*, Sept. 2, 1876, p. 160; Lord, 67; Hopkins, *Life Among the Piutes*, 70.

For Parker, Gold Hill Book A, original, clipping pasted inside cover; Hutcheson, *Historian*, VIII, No. 1, 11-14; Parker was one of the five delegates to the abortive Genoa constitutional convention of July 18, 1859; Angel, 59; Bancroft, 74.

For Knight, Angel 60; Lord, 36; Gold Hill Book A, where with Bowers, Plato and Rogers he made several filings of claim locations.

newspaper (all in manuscript), called the *Gold Canyon Switch*.

Brailey, who with Webb, often sang ballads in duet very sweetly.

"Dutch John" Smith the camp blacksmith, and something of a local character.

James Corey, poor, modest and proud, afterward becoming well to do,

"Dutch" Frank, full name unknown,

Ben Mass, who, with "Dutch" Frank, worked about the only Long Tom in the canyon,

Wm. Sides, who eighteen months afterward stabbed to death one John Jessup at Gold Hill,

John Berry, "Uncle Jack Berry," a great lover of the "ardent,"

O. S. Lyford, once a merchant in Missouri, and afterward said to have been raised to a bishopric by Brigham Young (the latter is only hearsay),

John Vignot, once a French soldier in Algiers, and known as "Little French John,"

Captain Chapman, who was with the troops at Santa Fe during the Mexican War, a large man deficient in courage and in much that goes to make up a man,

"Dutch" Baker, no other name known, a hard drinker and of little force,

Wm. B. Galphin, called "Cap," who served in the South Carolina Palmetto Regiment during the Mexican War, of fair ability, sober, honest, manly, a man that one could tie to,

Joseph Bretts, a German, as reliable as Galphin,

Wm. Williams, "Cherokee Bill," a dangerous man without one spark of honesty or real manhood,

Henry Fisher, a German, an all-around good, reliable man.

Captain A. A. Parker, Placer mining recorder, a man of more than ordinary frontier education and intelligence, had lived in the canyon five or six years but did not combine the elements of success,

Among others there was Wm. Knight, Georgia miner,

who when crossing the plains had remained on eastern slope of the Sierra (he has a story to be told later),

Joseph Sharp, young, honest, truthful and bubbling over with real manhood, who became rich, and was poor the last I heard of him, and ten or fifteen more men, whose faces are pictured on my memory, but whose names forgotten. These all spent that winter in Johntown and in the Canyon near by.

Three or four weeks after our arrival, Henry, (name forgotten) a "bad man," quarrelled with "Dutch Nick" and raised his double-barreled shot gun intending to kill Nick, but in his excited state (for even in that lawless country, among many desperadoes the taking of human life was a serious and exciting matter), he pulled on the trigger not set, and Nick's wife caught Nick by the arm and pulled him into the cabin. Immediately Johntown became too small to hold two such determined men whose blood was up, for Nick was a brave and aggressive man always ready for a fight against any odds. We all felt that a tragedy was imminent. Some of us tried to quiet the men. I had met Henry, in El Dorado county, California, the year before, and as he had always treated me kindly, he presumed somewhat on my friendship, so I tried to persuade him to leave the Canyon for the present at least. But he kept his gun ever ready for an encounter. Nick was, for a wonder, without fire arms in his house and Henry intercepted any one that attempted to take Nick a gun. Nick sent out a proposition that Henry should lay down his gun, and then they would fight rough and tumble until one or the other was dead, and none be allowed to interfere. Henry declined this kind of combat, and Nick, blockaded as he was, in his own house, began to rage, and hurled one insulting epithet after another at Henry (through the door slightly ajar, or again through some open crack in the loose stone wall of his house). All this maddened Henry the more, and after sunset one night, before it became truly dark, just as Nick opened the door an inch or two, Henry fired at close range through the door. The load of shot made a round hole an inch or more in diameter in the door, and then, more or less, buried itself in Nick's thigh. Nick fell with a cry of

"murder" that rang out over Johntown, deadly and chill. A score or more of us men rushed up to learn the fate of Nick. The groans of Nick, the screams of his wife, and the eager questions of men—"Where are you hit Nick?" came to me just outside of the door awaiting reports of the result.

Henry came nearer to look in over my shoulder. I turned and said, "Did you intend to kill him?"

With a quiet sinister smile he replied, "No, I only aimed to shoot his leg off."

A friend mounted one of Nick's horses to go for Doctor Daggett, thirty-two miles away.¹⁷ Early next morning the Doctor arrived and on examining the wound found the shot had stopped just before reaching the thigh bone. Nick recovered and founded Empire City at the bend of the Carson river, four miles from Carson City. Empire City sounds well, but the old settlers always called it "Dutch Nick's."

Henry gave up his gun and asked to be tried at once by the men in the canyon. Capt. A. A. Parker volunteered to prosecute the case. A jury was selected, each of whom was pledged to render a just verdict according to the facts. And we, who were not on the jury, to a man pledged ourselves to abide by the verdict and execute the jury's mandate. Henry pleaded his own case showing a good deal of provocation as an excuse. Parker made his plea for a heavy sentence. I passed in a paper requesting a written verdict, that we others might carry it out. The verdict read something like this:

"That by-gones should be by-gones. That either party attempting to renew the quarrel should be banished from the Canyon as an outlaw and might be dealt with in a similar manner by the entire community."

This last meant death on sight. That ended the matter. Just before Nick got well, Henry left, and I do not remember ever seeing or hearing of him thereafter.¹⁸

To show conditions as they were in this frontier country, I will now give the story of "a desperate border

17. At Daggett's Canyon, Carson Valley; maps at Huntington Library and Nevada Historical Society; Hopkins, *op. cit.*, 58; Bancroft, 72-3; Angel, 39.

18. Compare O'Riley's duel in De Quille, 94.

encounter" that occurred some six months before at the mouth of Gold Canyon (near what is now the town of Dayton), as related to me by several of the participants.¹⁹

After the passes had become open for travel in the early summer of 1857, a California negro, riding a mule, crossed over into Carson Valley journeying eastward. He seemed bent on forcing a quarrel with every man he met, and had several fights with different ones on his way down through the valley. Among others, he fought and beat Peter O'Riley, the big Irishman, who is often mentioned in the Comstock Lode Discovery. In fact, he licked almost every man he tackled except Jim Corey. Jim, active as a cat, brave as the bravest, outgeneraled the negro, tripped him up and before the negro could rise gave him a merited thrashing. This all took place in a very brief space of time, considering the ground gone over. On rode the negro, a terrible outlaw, a wild maniac or bordering on that condition, he traveled faster than the surprise and terror he created, could go. It is an open country and probably the negro did not keep on the old emigrant road half the time.

John Childs, owner of a trading post, operated it at the mouth of Gold Canyon, with his clerk, Mart M. Gage. A man rode up to the trading post, dismounted, went in and

19. Compare 1855 case of Thacker, a Negro; Bancroft, 77; Judge F. Norcross in Davis, *Nevada*, I, 274; Angel, 334.

Dr. Effie Mack, p. 181, refers to "the influx of a heterogeneous horde of transient irresponsibles" in 1859-60.

De Quille, p. 131, states that from California "with the miners and capitalists also came gamblers of both high and low degree, roughs, robbers, thieves and adventurers of all kinds, colors and nationalities." Many of the less desirable element were fleeing for refuge from California sheriff or vigilantes in a territory where law and order was as yet unrecognized, and "Old Virginny" himself is thought to have changed his name from Fennimore to Finney to escape legal penalties for some act of violence beyond the Sierras. Some "bad men" perhaps founded Nevada family trees, some were hanged on trees, or shot or knifed, many drifted on to newer mining areas. G. W. Read, after a dozen years in California, wrote from Austin, Nevada, November 29, 1863: "No church or place of innocent amusement here. The society here is perhaps the most loose and rough that was ever collected at any one point, since Noah's time. It averages from one to three men every day shot. The most reckless and wicked men I have ever come in contact with, but I find plenty of good, honest and pleasant men." G. W. Read, *A Pioneer of 1850* (Boston, 1927), p. 154. See also Gov. Colcord in Sam Davis, *History of Nevada* (2 vols., Reno, 1913), I, 236-8; Davis, *ibid.*, I, 242; Judge F. Norcross in *ibid.*, I, 277; Smith, 35; Angel and Lord, *passim*; Tom Fitch, in *Harpers*, p. 321, Vol. 31.

inquired if a negro riding a mule, had passed by there. They replied "No, none had been seen."

He then stated that a negro had stolen a mule from him, and that he had heard of him several places in Carson Valley, and that he was going eastward. The Californian, on looking out of the door, espied the negro coming down the road toward the Post and immediately went behind the door and covered himself with a blanket that lay convenient. Five or six men were at the Post, among them Henry P. Comstock and Gage. The negro did not halt at the Post, but continued on for one or two hundred paces, and crossed the Carson river apparently to stop and let his mule graze.

On being told that the negro had gone by, the Californian got up and asked the men if they would assist him to arrest the negro and get his mule. They all agreed to do so, and, closing the store, all started. Gage rode his own mule intending to ford the river, and the others, all armed, went on foot to the river bank. The negro was told to come back. He hurled back defiance. Then he was told that he must surrender or take the consequences. He dared and defied all of them. Then Gage crossed the river on his mule, and dismounting, made a shelter (breastwork) of his mule on the negro's flank and drew his revolver ready to fire. By that time the negro was in a towering rage and making the air blue with howling, blasphemous profanity, calling them all the vile names known to the frontier vocabulary.

The negro kept pointing his musket first at one, then at another, but did not fire. The men from the trading post began to feel that they had no ordinary mortal to contend with, and they all began firing at the negro. He seemed able to dodge every bullet by his active movements. The negro kept gradually making a flank movement on Gage, who had a Colts revolver. Every time Gage held his revolver over the mule's back to fire, the percussion-caps which unfortunately were too large for the nipples, would drop off; and thus one after another he lost all six of the caps off the revolver. By this time the negro had come close enough to charge on him, which he did, and actually captured Gage's mule and mounted him. Gage, without taking time to find the ford,

jumped into the icy cold mountain water and swam to the other side. The negro was sole master of the field. But what he really wanted was not a onesided fight, but a fresh riding mule in place of the jaded worn-out one he had stolen in California.

The negro started down the river bottom, but soon ascertained that he had made a poor exchange of mules. Gage's mule, a worn-out crowbait, couldn't travel at all. The crowd went back to the post discussing the affair, each one telling what he did, what he would have done, "if, and if," when to the surprise of all, here came the negro back towards the post, musket at "ready," and not a hundred steps away. They all ran in or behind the house to take shelter. Those who had loaded their weapons opened fire on the negro and he wheeled, jumped and gyrated as the bullets whistled by him, and soon as the fire slackened started toward them again yelling at the top of his voice: "Oh, you cowardly white-livered hounds, I'll get some of you. You've got to fight and some of you to die. I'll put this musket loaded to the muzzle to good use—you die, you die, you die!"

By this time more of the men had loaded their rifles and revolvers and again opened fire on the negro who retreated a little still wildly cavorting on the mule, and yelling. Comstock rested his rifle on the corner of the house and fired. All knew that the negro was hit by Comstock's bullet. About this time a Piute Indian, taking in the situation, crept through the sagebrush and shot an arrow into the negro's body. This stopped his gyrating but not his blasphemous tongue—"Oh, I'll get some of you white-livered hounds. Come on, come on you cowards, come and meet death and destruction."

By this time every actor in this tragedy was excited to an intense degree, some of them began advancing on the negro, others said don't go near to that monster while he yet breathes. One of the party felt so worked up that he would not be restrained, but advanced, revolver in hand, shooting at the negro all the time. The negro fell to earth, but when this man came within a few steps of him, the negro, with a

last dying effort, raised his musket and sent the charge full into his opponent's breast.

The negro fell dead in the dust and the man he had shot fell to the ground. Some of the party made sure that the negro would not rise again, others picked up this man to carry him to the post. His only words were—"Boys, what is coming up in my throat?" A clot of blood, a gurgle and his light went out forever. He was young, strong, brave and the pride of the Canyon, and rough frontiersmen wept at his sad taking off, and grieved to think that they knew not to whom and where to send tidings to his friends that their son or brother would sleep, lost forever to them, in the wild scented sage flat of the American Desert.

No one seemed to recollect what part, if any, the Californian had taken in the fight for his mule. As soon as he realized that this white man was killed, he mounted his horse to return from whence he came. That was viewed as an unfeeling outrage, and Gage, cocked revolver in hand, commanded him to halt and dismount, and addressed him thus: "You came here and requested us to assist you in arresting the most desperate man ever known. You were afraid of your own life even to be seen by this negro. In this service our best friend here lies dead awaiting burial and we have not the means to decently inter him, and you even hope to shirk your assistance for the burial of the dead who died on your behalf."

The Californian replied, "Men I cannot blame you, I would give everything I have on earth to call back the life of that brave, noble young man. All I have with me is one hundred dollars. Here it is, take it and give him the nearest a Christian burial that you can. I can do no more."

They accepted the money and faithfully carried out the request. To the parents, brothers, sisters, and friends of this young frontiersman, whether or not he went to swell the large list of "never-heard-of after," or not, is to me unknown.

"Old Virginia," (James Finney) some months previous, had discovered placer gold at the head of Six Mile Canyon up near the foot of the range of mountains that divides the

waters of Carson and Truckee rivers. Six Mile, like Gold Canyon, in which our company lived, flows into the Carson. They head within a mile of each other at the base of Mount Davidson, as afterward named. Six Mile drains the north half of the now famous Comstock lode; Gold Canyon the south half. The distance from old Johntown to the head of Six Mile is some five miles.

During the summer or early autumn of 1857, Joseph Colwell,²⁰ Francis Board and two others, names forgotten, in company with "Old Virginia" and "Many" (Emanuel) Penrod, known as the "California Company," began mining with rockers (the old miner's cradle) at the head of Six Mile, making good wages. Much of the gold still adhered to small pieces of quartz.²¹

The water used in the rockers was very limited. After being used by one rocker it was allowed to run into holes, settle, and be used by the next rocker below until it was too muddy to be used again. The auriferous earth overlaid the bed rock in depth some three to six feet. The workings were a few hundred feet down hill from the Comstock lode as afterwards discovered and named the "Ophir."

I will now relate the first discovery and workings of quartz, as personally known to me, an actual worker and participator therein. [First, that is, in Nevada.]

First let me state that I did not know the Grosh Brothers,²² the so-called "Comstock Pioneers." Both were dead before I went there. One was then buried in Gold Canyon, the other in California. I do not wish to deprive these unfortunate brothers of any credit to which they may be entitled. Capt. W. B. Galphin was, so he informed me, a mining partner of theirs, and cabined with them part of the time while they were in that country. *He was also one of the mining partners of our company, which company built*

20. For Caldwell (sic), De Quille, 52, 73; Bancroft, 103; Gold Hill Book A, p. 36, Aug. 11, 1859 refers to the "Caldwell lode." Caldwell sold the Ophir spring to Comstock; G. H. Book A, p. 10.

21. Angel, 51; Childs asserted the California Company mine was doing well in 1859, on his return from Walker River. For Penrod, Angel, 56; Lord, 37.

22. For Groshes, Smith, 4; De Quille, 33; Angel, 50; Lord, 24-32. Mrs. Ellis (Dettenreider) agrees as to Galphin being a Grosh partner; Angel, 51.

the first arastra and did the first quartz mining east of the Sierras, and obtained, so far as I know, the first silver bullion produced in the United States. What the Grosh Brothers said and did while in Nevada will be stated farther on and just as related by Mr. Galphin.

As before stated, the winter of '57-8 was a dry winter. The members of our company were restless and constantly chafing for want of active, prosperous employment. How to mend matters was an everyday discussion not void of recriminations. Against my extreme protest, our small stock of merchandise had been placed on sale before the other miners had begun to make the wherewithal with which to purchase. Most sales were on credit and the bills were never collected. At that time I had made but slight examination of the heads of the Canyons. I was the salesman, of our goods, and gave close attention to our trading post.

Hearing good reports of quartz near the Devil's Gate,²³ I prevailed on Houseworth and Lashbaugh to go up there and examine some of the lodes. They did so, and returned with a few pounds of rotten quartz. On examination I found it showed some fine gold, plain to the naked eye. This little discovery excited us more than I can describe. Old miners understand the depths of despair and the bounding joy of a "strike," and they only, in its intensity.

I recall how I lay awake much of the night, sometimes listening to the mournful, quivering, wailing cry of the night bird of the Great Basin, he who has heard it in loneliness, can never forget it. But it produced no sadness in my heart then. We were even then, though we knew it not, on the trail of that stupendous deposit of silver and gold, the Great Comstock Lode. Hundreds of millions of royal metal lay between us and the barren range of high hills to the north, where the Coyote, Mountain Sheep, Deer and Antelope were game for the hunter any day.

The next morning when the rising sun reddened the hills, Houseworth, Lashbaugh and I, with pick and shovel and pan, started up Gold Canyon to prospect the gold bearing quartz. On nearing the Devil's Gate we saw Joseph Bretts

23. Devil's Gate is a narrow place in lower Gold Canyon, near Silver City.

and Capt. Galphin coming down the hill on the east side of the Canyon, walking fast and seeming somewhat excited. On meeting us Bretts said, "See what we have found."

He opened a little paper and showed us perhaps half a teaspoon full of fine gold and told us that it was taken from a pan of rotten quartz from the croppings near the top of the hill.

"Had they staked off a claim?"

"No."

"Would they take our company in as partners, and we all prepare to work it?"

"Yes."

We all returned to Johntown and discussed the discovery. Major Wm. M. Ormsby, then the most prosperous and energetic man on the eastern slope of the Sierra, hearing of the find, requested a share in the location, and offered to furnish horses, mules and feed for working the arastra that we were proposing to construct without delay. We agreed thereto and did as we promised. The Major, however, never carried out any part of his verbal promise.

I drove down a stake on the croppings, and put up a notice of location thereon. This, I have no doubt, was the first notice claiming quartz lodes made east of the Sierra Nevada Mountains, and for that reason is quoted herein from memory. It read like this:

"We the undersigned claim nine claims of six hundred feet each on this Pioneer quartz lead, running east from this stake and notice thirty six hundred feet, and west eighteen hundred feet, with all the dips and spurs and angles.

Gold Canyon, Utah December — 1857.

Joseph Bretts
Wm. B. Galphin
A. L. Johnson
J. A. Osburn
V. A. Houseworth
G. A. Lashbaugh
John Bishop
Wm. M. Ormsby
Wm. H. Dolman."

We at once began the construction of an *arrastra*. As this is perhaps the rudest effective mode of pulverizing quartz, thereby freeing the metal from the quartz matrix, a brief description of it may be of interest.

An excavation, circular in form, and one and a half feet deep and some ten feet in diameter, was first made. That was paved with large stones, leaving a surface as nearly level as practicable. A round post was set in the center of this excavation, then flat rocks were set up all around the rim, which when finished caused it to look like a miniature ring of a circus. Sweeps, like those for grinding clay, were mortised into the center post, and to those sweeps large drag rocks were attached. Framed timbers properly anchored at the rim, kept the top of the center post in position. A long sweep was then attached to the top of the center post. Horses hitched to the outer end of the top sweep walked round and round in a circle. The quartz was pulverized between the rock bed and the drag rocks. Two animals, driven by one experienced worker could crush about one ton of rock in a day. Quartz reduction was new to all of us. Instead of starting with a charge of a few hundred pounds, as we should have, we put about three wagon loads in the *arrastra*. The result was that the drag rocks never came in contact with the rock bed. In the multiplicity of council there was failure.

Noticing a large amount (relatively) of pyrites of iron in the quartz, I put in quite a bit of salt, thinking it might rust the iron and free the gold. Several times we raked out the coarser pieces of quartz, and put them in a log fire. Unwittingly, we here began the "patio" process of working silver ores. In this way we obtained some silver from the sulphurate that would not have been reduced without salt and heat.²⁴

With a mule and horse and a limited quantity of provender, we kept up this attempt at reduction some three weeks, then turned out the animals to recruit on the dry

24. The *Arrastra* method is described in Angel, 583; also in Lord, De Quille, and in Shinn, *Story of the Mine* (N. Y., 1896). *Arrastra* and *patio* were terms and processes long used in Spanish America. Dolman's party was the first to use these processes in Nevada, since earlier mining was gold placering. The Grosh processes are unknown, although De Quille implies they owned assaying or reducing equipment using heat; pp. 33-35.

bunch grass, most excellent feed it was. Then with a miner's cradle we rocked out the partly pulverized batch of quartz. I was an experienced miner in fine placer gold, and did the "cleaning up." We had been unsparing in using quicksilver, probably thirty or forty pounds had been put in the arastra first and last.

As the "clean-up" progressed I became more and more astonished at the show of metal in the quicksilver. I ventured the opinion that the prospects did not show any such quantity of gold as that indicated by the quicksilver. Jeers and hot words were bandied back and forth. I kept repeating, "Boys there is something else beside gold in this quicksilver."

The retort came back hot, "Now that you found it you are too much of a bear to believe it."

I worked away carefully and cleaned up all that was put in the rocker. After the wash-up I found the quicksilver about the consistency of soft wheaten batter made ready for baking hot cakes. Instead of the amalgam settling to the bottom of the pan, it permeated the entire mass. Then I ventured the quip, "If this is gold, our clean-up will be a thousand dollars."

We poured the mass into a buckskin, and by gentle squeezing, the pure quicksilver strained through. The mass within the buckskin became smaller and smaller. After no more quicksilver could be squeezed out I looked at the amalgam carefully and ventured that the value would not be over four hundred dollars. We all went down to Johntown, and I re-tested the amalgam. That was done by placing the amalgam in a frying pan and agitating it over fire within a stove, using care that the fumes of the quicksilver should not be inhaled. Much more time was occupied in this re-testing than I had experienced with any placer gold amalgam heretofore. At last it was pronounced "done" and before it was yet cooled, so eager were we to ascertain the result of our labors, we put it in the gold scales, and found the weight to be only about six ounces. That meager result acted much like a cold bath on our company.

We all, as gold miners, had experienced disappoint-

ments, and who that has hunted for gold has not; but this "come-down" took about all the manly courage out of us. Little was said. Each one seemed to have a faraway look, was perhaps thinking of some cherished maiden back in the States, who, for the past month, had, next to gold, been uppermost in the mind, and of the handsome presents he would buy for her, and the house he would build for "her"; and of his father and mother, brothers and sisters, how happy he would make them with gold, ready coined, and of the dear little sister, in short dresses when he left, who was now a young woman and had written him a letter so kind and tender that it dimmed his eyes each time he read it over. She had requested that he bring her a gold watch when he came back from California. Yes, he meant to do so, and also to purchase a coveted piece of land for his parents, and :— Here he was wrecked again, by sad disappointment. He would just like to kick that pitiful contemptible lump of amalgam so high that it would never come down.

In the far off ridges of California and the other mining states, men of three score and four score years, grizzled, whitened locks, bent and rheumatic bodies, are prospecting, mining, and still thinking of when they left home fifty years ago, it only seems a little while ago; of the lovely maiden he proposed to return for and claim his bride (she is several times a grandmother now), of clasping his fond mother to his breast (oh, she and father, together with most of the family have been laid to rest many a year). But it is all an unfaded picture photographed on his mind.

This short diversion on the disappointments of the gold seekers may seem overdrawn. A history of most all miners' lives would be incomplete without it. As to being overdrawn, I have merely scratched the surface. The sorely, deeply disappointed wrecks of men in the gold fields, are fast disappearing, and their inward life may never be written.

"What was it that promised so much and gave so little result in the quicksilver?" was the frequent question in our company that remained without satisfactory answer.

"Perhaps silver," said Capt. Galphin.²⁵

25. It should be recalled that Galphin had been a partner of the Groshes.

"Might be lead," said another.

No assayer was then established within the Great Basin to whom we could put the question.

This re-tested mass was given to Major Ormsby to be sent to Sacramento for assay. Never one dollar or any written report was returned to the company. If any member of the company, other than Major Ormsby, received any return from him, I do not know of it, and never heard that such was the case. Ormsby told me that its value was something over forty-three dollars, and that it contained gold, silver, copper and lead. I personally believe that the last two metals were not in it. From knowledge of later workings, it probably must have contained about:

2 ounces gold and equal in round numbers to	
two \$20 gold pieces -----	\$40.00
4 ounces silver equal to four silver dollars--	4.00

You will understand that the silver bulk was double the bulk of the gold, and, the mass instead of being yellow, was almost white.

Capt. Galphin told me that his former partners, Allen and Hosea Grosh, had possessed a blow-pipe and some crucibles, and that they had devoted a good deal of time in making tests for silver. It would seem that the brothers, in the course of their education, had studied metallurgy, but had had little of any practical experience therein. They thought that they found evidence of silver, but were never quite certain that such was the case.

No man or company of men can be named as the only and first discoverers of the Comstock lode. Our company certainly worked the first quartz and obtained the first bulion. In the light of later years, we were ignorant of silver mining, of "chlorides" and "sulphurets," but who knew any more than we did about it? Just as well say that the farmers of a hundred years ago were too ignorant to use a McCormick Reaper.

Gold being a known metal came into notoriety when Marshall picked up his first nugget. Not so with silver. It was not found in the condition of metal. It came to be known

by slow stages. Now one can look back and say, "Why did we not have sense enough to know. . . .?" That all sounds very plausible, but it is only by the light of subsequent practical work that we know how to work these same silver ores.

Galphin was a man of few words and seldom volunteered information unsolicited. Many a time when tramping over the hills with him, I would again refer to this question of silver. Silver deposits were then unknown in the United States. We had everything yet to learn about it. If Galphin had learned anything from the Groshes, I wanted to acquire the knowledge. Even if they thought possibly they had found evidence of silver, where was the deposit located from which they obtained the ore? That raises the question whether or not they worked or located any part of what was soon after known as the Comstock lode. Galphin pointed out the place to me but did not accompany me to it. These quartz croppings were nearly one and one-half miles westerly from the Devils Gate, where the Pioneer lode was located. The wagon road from Virginia to Carson City, after passing through American Flat and over the Divide,²⁶ and down the grade one quarter to one-half a mile, passed to the eastward of these croppings some hundreds of yards.

I found some little work had been done on the quartz, but saw no evidence of silver. The fact is, I would not have known silver in any other form than metal, even if it had lain there rich as the Bonanzas. It was what miners called a "blanket deposit," and not very extensive. I did not make a second visit to it. I am not certain that this lode was ever re-located, but I suppose it was claimed at sometime during the three great Comstock booms.

Comstock historians of later years have expressed a good deal of half sympathy and half contempt for all the pre-Comstock miners, except the Grosh Brothers, because they did not know enough to go up and locate the mighty deposits of silver. I might retort, "Why did not you do it?"

If you answer that you were not out of the cradle then,

26. Mr. Peter Quilici and the late Dean Margaret Mack, both familiar with this area from childhood, agree that this "divide" was probably that between American Flat and Mound House Flat. It could not be "The Divide" between Virginia City and Gold Hill.

or you were not there, I will answer, "And had you been there, you could not have seen into the ground unless there was a hole in it."

Out of the tens of thousands of holes there now very few struck paying silver deposits. I would as soon have tackled Mt. Davidson as those monster croppings located for Old Virginia, to find gold. Silver was then an unknown factor, and cannot be considered in the light of later manipulations.

I will now take up the thread of history where it was left off the evening we re-tested the clean-up.

The effects of keen disappointment had worn off by morning, and we started to the arastra, more to show that we had not met with any disappointment, than with any fixed purpose of future working. However, there was no heart in the work, so we took long rests at noontime, and before many days we "nooned" most of the day, or prospected elsewhere.

Feeling the necessity of having some quartz mining laws governing locations, a preliminary meeting was called at which I was appointed a committee of one to draft laws and define boundaries for the district. In the performance of this work I had no older laws or regulations to refer to, and I had never before made a quartz lode location, nor had I ever examined or even seen a record of quartz mines. There was not even a blank book in Johntown that could be utilized for the laws and proposed records. On the day named in the notices to pass on these laws, ratify or reject, some twenty or more miners met at our trading post.

The laws as submitted were adopted, and I was elected Recorder of Quartz Mines in "Columbia District," which included within its boundaries all of what was later known as Virginia, Gold Hill, Flowery, Silver City, and some other outlying districts. A few quires of letter paper sewn together was the Book of Laws and Records. This was undoubtedly the first code of Quartz Mining Laws and Records made and declared east of the Sierra Nevada Mountains.²⁷

The Pioneer claim where we worked with the arastra,

27. Kelly, 37-41; Lord, 33-4; Hutcheson, *Historian*, VIII, No. 1, 9-18.

was the first claim recorded. Some four or six other little leads were recorded within half a mile of the Devils Gate. Only one claim was recorded on the croppings of the "Comstock" as later named.

Early in March, 1858, Lyman Jones proposed that we go up to Joe Colwell's Camp in Six Mile, and look over the diggins. Arriving there we found all of the Colwell company at work except "Old Virginia." Two or three Indian "wicki-ups" were on the bank near the ravine that was being mined. In one of these I found "Virginia" with what had been a bottle of whiskey, only part of which was left. He had a long doleful story to tell me of how his Partners had swindled him out of his claim. I will relate it near as remembered, in his own words, leaving out the "damns."

"I discovered these diggins here in Six Mile, and I took in "Many" Penrod and Colwell and Board and all that crowd, and never charged them a cent. Just as quick as they took out good pay they got up a scheme to throw me overboard. They staked off the claims and numbered them from one to six and wrote these numbers on slips of paper and put them in a hat, and said I must draw out a number, as they would, and each man would own the claim so drawn. And (blank, Blank 'em) they fixed the thing up so that I drew the claim farthest down the ravine, and there is no pay in it, and if there was, the water is all wasted or evaporated before it reaches that claim, so I who discovered the diggins, am thrown out with nothing. I am too old to work much anyway."

And the poor old man took another drink from the bottle, and proceeded to make the air blue with profanity, that we trust may not be a witness against him in the Great Beyond.

It is a remarkable fact that, while Gold Canyon was richest in gold from the mouth up three or five miles, Six Mile Canyon produced very little gold, and that only in fine scales, from a few hundred yards below the Ophir to the mouth.

Joe Colwell had been a gold miner in Georgia, who came in early days to California. He was a man of limited

education, but rare natural ability. He would have been a leader of men anywhere. He was kind, gentlemanly, and a conversationalist that one would never forget. It is possible that through this "trick," if it was all a trick, depriving "Virginia" of his pay ground, he lost a vast fortune for himself. Colwell had remarked to me several times that he thought there was something "big" above where they were working. He left those mines, however, in April and never returned.²⁸ I now think he feared "Virginia's" rifle. Of all countries known to me, men oftenest, in this one, paid their lives in penalty for an injury. Still angry, "Virginia" said to me, "Go up to the big croppings and stake me off a quartz claim, and I will give you a dollar's worth of dust to pay the record fee the first time I come down to John-town."

I insisted that he should stake off the location. He steadily refused to do so, or even so much as rise up and point out where to drive the stake. I then wrote a notice for him, and requested that he give the land a name. He refused to name the lode, or sign the notice. His constantly repeated reply was, "Call it what you please, Colwell and his crowd has cheated me out of my surface ground, and I will leave them out of my claim on the big croppings."

At last, I said, "Well if you won't name the lode, I will immortalize you by calling it the 'Virginia Lode'." From memory I would say the notice read thus—

"I, the undersigned, claim six hundred feet on this Virginia quartz lead, running six hundred feet westward from the big rock nearest the ravine from which the spring runs out.

Columbia District, Utah.
March the _____ 1858."

JAMES FINNEY.

I intended locating a claim for myself on the same lode, and just why I did not do so, is a profound mystery to me even at this day. My name alone on the records would have

²⁸ April, 1858. Compare De Quille, 52, 73, regarding Caldwell. The "Virginia Lode"—really the out-croppings of the Comstock hanging wall—never was profitable mining ground; Smith, 13. See De Quille, 53; Bancroft, 103; Hutcheson, *Historian*, 10, 16, regarding later history of this location.

been worth more than a million dollars to me, or might in turn have cost me my life. "Old Virginia's" location was the last record on the old Johntown Records, and the only one in that vicinity, all the other locations being not far from the Devils Gate.

In the spring of 1858, after a brief effort to strike pay on the east fork of Carson river, all of our company (except Johnson who had crossed to California on snow shoes), the Colwell company of four men, and twenty or thirty others, struck out for the east fork of Walkers River, some ten miles westward from where Bodie was afterwards built. The diggings there were not very rich, and averaged only two to four dollars per day per man. Dogtown was the name given later to this place.²⁹

By this time sixty or seventy percent of our trading post stock was gone, and we had no money to show for it. I then tried to place the trading on a cash basis. My partners would sell (give away) anything asked for. They had most of the camp as friends, by playing "liberal Dick" with the stock of goods of which I was principal owner. The fact of my being the prime mover in organizing the company, that now was expecting nothing but loss in the wind-up, was against me. I was a young man of strong convictions and not very prudent in maintaining them on all occasions. By and by remarks were made in which "shooting" was hinted at; that meant something in this wild lawless country.

Two men from the frontier of Arkansas had joined our party in Carson Valley, and went to East Walker with our train. These men were honest, upright and generally inoffensive, but desperate when roused. They seemed to have that sense of justice peculiar to frontier life. To see the weak imposed upon by the strong, made it largely their quarrel, and with them a quarrel meant blood. I had seen both of them tried by circumstances, and only timely interference prevented a tragedy. These men said to me, "I see you are

29. For various "rushes" like that to Walker River about this time, J. S. Hittell, *Mining in the Pacific States* (San Francisco, 1861), 29-35; *U. S. Mineral Resources*, 1866, pp. 17-26. Also Angel, 51.

to be swindled out of what you have here, if nothing worse. Stand your ground and we will stay by you."

I thanked them kindly for their friendship, but told them I had about concluded that the sooner I left the company the better for me at least, and possibly for others.

I had a wagon, that, could I get it back to Carson Valley, might sell for one hundred to one hundred fifty dollars which would give me a stake to reach California again. Some twenty dollars in cash was all the money I had, fifteen dollars of this I paid to one of my friends for the use of three yoke of oxen to haul my wagon and me to the settlements.

How happy I was in starting away, flat broke, so to speak. But I lived, as did those behind me. No one had to answer for a life taken. More than two score years³⁰ have passed since that day, and now I still think that only my firm course prevented what would have been one of the most fatal tragedies, considering the numbers, even known on the border. Every man carried a revolver, and most of them a rifle or shot gun.

We made fast (oxteam) time to cross the main Walker before the melted snows would raise the river too high to be forded. The Walker must be crossed and recrossed five times from Dogtown to Carson Valley. We succeeded in doing so once and once only—the wagon was left there to rot. We were still more than thirty miles from the nearest house in Carson Valley. By the accident at the crossing my only coat had been torn in shreds and my pantaloons were in much the same condition. That was by all odds the hardest thirty miles I have ever been over. I arrived at Moses Job's store in Carson Valley, which was being tended by Mr. Pickering, who accepted my last five dollars in payment for a seven dollar pair of pants.³¹ Mrs. Job, kind, humane lady that she was, invited me in to partake of a nice warm supper. To this day the kindly sweet face of Mrs. Job is before me in all its loveliness, whenever I recall that

30. Dolman's memoir was written for his daughter to publish, in about 1900, but was based in part upon contemporary diaries and written records, as well as upon memory; his memory was unusually good.

31. Jacob Job, like Childs earlier, operated a store in Gold Canyon; De Quille, 30; Bancroft, 74.

desolate return to Carson Valley, and, whether good fairies or evil brownies waited on her afterlife, she had one friend who keeps her memory green, on the down grade, when the mile stones of life are counted very fast.

Foot-sore, weary, and without a dollar in the world, a pretty wind-up this was to the buoyant, happy, hopeful start made from Placerville seven months before. In that interval I had tramped over one of the richest treasures of earth, but a few yards under my feet, and knew it not.

Just at this time signal fires could be seen in three or four places. This presaged a pending calamity, and it was no Indian scare.

In the early morning before twilight showed in the east, the tramp of a hundred horses carrying mounted armed men awakened the ranchers of the Valley. A Vigilance Committee had come up out of the earth, as it were. "Range yourselves in line for us or against us," was the half request, half command of a voice that meant every word. It depended much on the circumstances of who one was with, and the first thought of surprise, as to the side on which he lined up. The Vigilantes were outspoken, and their recruits immediately became so as well. Those who looked on the proceeding as being unlawful, also most of the "hard cases," were opposed to Vigilant Committees.

The chief reason for the Committee's action was the murder of a Frenchman, Louis Gardier by name, owner of a large band of cattle, ranging in Honey Lake Valley in northeastern California. Some men from California, assisted by others who lived in Carson Valley, had caused Gardier to be murdered, and the cattle were divided up among them.

Gardier's body was found and dragged out of a deep hole in Susan river, which empties into Honey Lake. One Thorington, called "Lucky Bill," a bold bad man, was said to have managed the affair. His life paid the penalty a week later. A fugitive, named Edwards, who had killed a man named Snelling in California, was apprehended, and also met "Lucky Bill's" fate.³²

32. "Lucky Bill" Thorington was a shrewd but humane, Robin Hood-like

For a time all business was at a stand still in Carson Valley. The Committee held Court at Dick Sides' ranch, ten miles above Genoa, on Clear Creek. Sides and "Lucky Bill" were mortal enemies. The Committee of armed men had organized in Honey Lake Valley, and made the arrests in Carson before report of their coming had reached Carson. Three times the usual number of jurors were sworn to try the prisoners fairly, without prejudice or partiality. The proceedings were much like in an ordinary criminal court, with this difference: The Judges (3) and the Jury (36) believed the prisoners to be guilty and intended that their lives should pay the penalty: so at least, it seemed to me.

Before the trial terminated, I became aware that the Indians, Washoes and Piutes, were much alarmed at seeing such a body of armed men. Traveling in an Indian country under such circumstances, I knew to be very unsafe. As I wished to go to California, I proposed to two men, who intended crossing the mountains over the Truckee route to California, that we had better start before the Vigilantes went back home over part of this road, and we did so. By traveling carefully, and quietly (the latter conduct is most important at such a time), we reached our destination with but one disturbing alarm, to which we apparently, insofar as the Indians were concerned, gave no attention. We traveled along like men, minding our own business, loitered not, nor moved hurriedly. This was in June 1858.

Before starting to California, I left my old Johntown Laws and Records with John Childs, a merchant in trade at Genoa. Several miners had been informed of this. I

gambler who progressed from a brush-tent trading post at the eastern base of the Carson Sierra crossing in 1850, to opulence by 1856. Mrs. Hopkins states (p. 58) that "Thornton" had two wives—hence, perhaps, the anti-Mormon color of the lynchers' party, mainly Californians out to reform Nevada. Bancroft, *Nevada*, 68-85; Bancroft, *Popular Tribunals* (Works, XXXVI, S. F., 1881), I, 594-620; Angel, 56; Mack, 177; W. Cradlebaugh, "Nevada Biography," MS., 1, and H. Van Sickle, "Utah Desperadoes," MS., 3, both in Bancroft Library, Univ. of California; R. W. Ritchie, *Hell-Roarin' Forty-Niners*, 215-221; Kelly, *2d Nev. Dir.*, 1863, 37-41; *Sacramento Union*, June 17, 22, 25, 1858. The last two, nearest contemporary, agree closely with Dolman's account. John S. Childs was appointed Carson County probate judge by the new non-Mormon Utah governor, Cummings, in 1858, after the Utah War. In the October 30, 1858 Carson County election, though the real Mormons left in 1857 for Salt Lake, the winners were called the "Mormon" party—actually pro-law and order, pro-Childs, anti-vigilantes, and hence pro-Lucky Bill, too late.

have been told that later when it became evident that something valuable had been struck that should be recorded, some man rode in great haste to Genoa to get these records. Before they could be found the second man, then the third man arrived on the same errand. Mr. Childs thought something very important was up, and did not produce them at all.³³

New mining laws were then adopted for Virginia District,³⁴ a blacksmith and my Placerville company partner and Pioneer company partner, V. A. Houseworth, was elected second Quartz Mining Recorder, and recorded all the claims on the Comstock except the "Old Virginia" claim that had been recorded by me. Thus the Placerville company gave to the silver mines the first and the second code of Laws and Recorders.

I did not return again to Gold Canyon until March 1860. The Comstock was discovered and located in 1859, as is related below.

On returning to Nevada in March 1860, I learned that John Jessup, whom I had known in Sierra County, California, in the summer and autumn of 1858, had gone there the year before and had a claim on the surface of the Comstock and was working on it the day on which Wm. Sides stabbed him to death. This was just before the silver strike had been made. Seldom has the murder of one poor man on the outer border of civilization been followed by such marvelous results.³⁵

The entire camp except two men—Peter O'Riley and Patrick McLaughlin—formed a Committee of Vigilance and started with Sides for the Valley, as they said, to try him and hang him. These two men left in Six Mile Canyon were not the owners of claims there then. They commenced work on other claims to make a little money, and no one was there to say, "Nay." The first day they struck the rich croppings of the Ophir Chimney and took out over three hundred dol-

33. For Childs, see Mack, 178, 182, 340; Angel, 51, 64; Bancroft, 74, 84.

34. At first the whole quartz district, including Virginia City, was called Gold Hill District. Gold Hill Records, Book A; Hutcheson, "Early Mining Districts," *Historian*, (1945), VIII, No. 1, 5; Lord, 15, 33.

35. For Sides and Jessup, see note 16, above, and note 38, below.

lars. They covered up the rich deposit, and with this money they purchased an interest therein.

While the miners were away trades were made, claims were jumped and by the time all returned, some who had obtained a doubtful interest in a doubtful way, drew their guns and ordered their ground set off to them on pain of death. Here was laid the foundation of litigation in which many millions were contended for in the courts. I did not learn who held Jessup's claim, it might have gone to one, but most likely was parceled out. Jessup had told me what his employment was in Missouri, and where his widowed mother lived. I was probably the only person who had taken enough interest in him to learn these facts.

Jessup was buried in the Canyon in front of the later located Crown Point Mine. Later a wagon road was opened past that grave and still later that wagon road became the main street of Gold Hill.³⁶

Most of the newspaper correspondents of the period made a fling at the barbarous people who could bury a human being in the street. They were ignorant of the facts of the case and put the cart before the horse. In the winter of 1860-61, W. C. Davol, Gold Hill Mining Recorder, John Overman³⁷ of the mine, and I, with the assistance of three or four others, exhumed the body and re-interred it in the present cemetery.

Much later still, in the fall of 1864, a Mr. Greer (followed by a woman who kept in the background) asked me if I knew the place where John Jessup was buried, on making reply that I did, he said, "John's mother wants to see his grave."

I then turned to look at the woman, still a dozen yards away, and said, "Are you John Jessup's mother?"

"Yes."

36. DeGroot and Camp surveyed the main street of Virginia City and Gold Hill along the supposed line of the lode, except where miners refused to let their shacks be moved; Lord, 63-5. In Virginia City this street later became "A" street, higher uphill than "C" street, the main street after 1862. DeGroot was briefly editor of the *Enterprize* in 1860-61, and was the first Nevada census marshal in 1861. His scrapbook of clippings is in the Huntington Library. See also Mack, 224-7, 212, 124n.

37. For Overman (and Sparrow) see DeGroot, No. 14, *Min. & Sci. Press*, 1876, p. 426.

"Did you receive the letter I wrote you in care of the Springfield Republican?"

"Yes."

"Did you ever answer it?"

"No."

I looked at the woman in utter amazement, choking back the disgust I felt, and said, "In the state this lawless community was then in, I took my life in my hands when I wrote you of John's interest on the Comstock, as it would at once create an adverse title, or the entering wedge for one, which in effect was about the same, and you have not made the least acknowledgment of the service or the courtesy. Has the Ophir settled with you for John's claim?"

"Yes."

"What did they give you?"

"Thirty thousand dollars."³⁸

This woman acted as though she feared that I might ask her to reimburse me for the postage stamp wasted on the letter sent to her with the information of her son's death and of probable valuable interests left by him. I told Mr. Greer where to find the grave, that a picket with writing by lead pencil told the story of, "Here reposes _ _ _ _ _ ." and turning my back to this female, never saw or heard of her after this first and last meeting.

After it was ascertained to a certainty, in the spring and early summer of 1859, that rich silver deposits had been discovered, western Utah and California were at fever heat of excitement.

It was called to mind that a Mexican crossing the mouth of Gold Canyon several years before, when examining float quartz, had said, "You will find rich silver mines back in them hills."³⁹ Mexicans did not uncover the first rich silver

38. For Jessup, see DeGroot, No. 13, p. 420, *Min. & Sci. Press*, Dec. 23, 1876, who confirms Dolman's story as to the murder, moving the grave from the road, and Ophir payment to the mother; also Lyman, *Saga*, 362; *Territorial Enterprise*, June 20, 1875. Judge F. Norcross in Davis, *Nevada*, I, 277, states that the indictment against Sides, Nevada's first, was dismissed on motion of prosecutor.

39. Compare De Quille, 39; Lord, 13, 24, 61. Mexicans placered the lower Gold Canyon, and a Mexican, known only as "Old Frank," may have shared the Grosh secret. Dolman refers here to the Maldonado brothers, early owners of the Mexican Mine; DeGroot in *Min. & Sci. Press*, No. 3, Aug. 12, 1876, p. 112.

deposits, but they were the first to recognize and profit by the discovery. The best house in Virginia City in the spring of 1860, was occupied by them and they were working ore in the vicinity of the Mexican mine adjoining the Ophir claim on the north.

Then it was remembered that the two brothers, named Grosh, had, a year or two before, prospected for silver, thought they found it; and it is said had found it, had absolutely found the Comstock and that all others were only jumpers.

These were the after thoughts of men not familiar with the earlier history, and who, for a time at least, expected to gobble up the entire Comstock lode.

The Grosh Gold and Silver Mining company was certainly indebted to imagination for much of the evidence on which they based their claim in the lawsuit for possession of the Ophir, Gould and Curry mines, and whether these two companies bought off the Grosh company or not, I cannot say. In any event the Grosh company was certain to have met defeat for lack of evidence that they ever "struck a lick" on the great Comstock croppings.⁴⁰ In those barren, stunted sagebrush hills, in these early days, even the dirt scratched out by the Coyote would have attracted attention.

In the early spring of 1858, I had walked over the land afterward located as the Comstock, without noticing that the ground had been disturbed in the least. I do not remember striking a lick with my pick either; that however, is merely negative testimony. To mine, one must excavate rock and earth. How is it possible to do this without making a showing on the surface? Might as well say you spaded your garden or plowed your field without making a mark or disturbing the surface.

40. See references of Grant Smith, a Comstock and San Francisco mining lawyer, to the Grosh Company "blackmail" suit; Smith, *Comstock*, 70, 31-4. The Gould and Curry was a single company, in the early 1860's employing at times more men than any other mine, but not long profitable. The Ophir made the fortunes of Senator George Hearst and of Darius Ogden Mills, among others. The Mills-Ogden Reid mansion near the Hudson is called Ophir Hall. Fremont Older, *Life of George Hearst*, 87 ff.; Chico newspaper clippings, U. of Nevada Library; Virginia Records, Book A, 1-2; G. H. Book A, 17, 23, 26. A. Delano—no doubt "Old Block," the Grass Valley humorist—filed jointly on the Utah, as did Henry Miller, perhaps the cattle king.

The later comers thought that they could have done so much better had they been in at the discovery, than the Pioneers had done. The facts are: the Pioneers possessed the fair average miner's horse sense, and common school education at least. They had not been born and raised in that desert country. They all came from somewhere and had learned something on the way, and also after they arrived.

They were of a higher average intelligence than were the pioneers who settled the great Mississippi Valley, because they knew as much as they, when they started to California, and in the efforts to get there, and the greater distance traveled over, and in the greater variety of men with whom they came in contact, they took on a better practical education. A more intelligent average army of young men than those who peopled California, never trod the earth. The fact that much of the time one or two manuscript newspapers circulated in the Valley, and in the mines, shows isolation and limited facilities certainly, but not ignorance.

After returning in March 1860, I settled in Gold Hill and lived there eight years. During that spring the old Johntown records came into my possession. I made several certified copies of them, and also left them with the Virginia mining recorder to be copied into his records, which I supposed was done.

Charles H. Fish, afterward in Bonanza times, president of the California mine, was, I think, a deputy recorder at Virginia and probably entered my old records in his District Record Book. I loaned the records to Hon. Wm. F. Anderson of Nevada, and when I asked them back some years later, was told that they were burned in the great Virginia City fire of 1875. So ended in smoke the first mining records of the pre-Comstock days.⁴¹

41. But earliest Gold Hill and Virginia district records were preserved (although Smith, who relies on printed sources, did not use them); see *Historian*, VIII (1945), No. 1, 5-18. Interested parties—mine-owners, their lawyers, or officials—may have put the earlier Dolman records out of the way, lest they cloud mining titles and prove source of litigation. The Virginia City recorder seems never to have recorded them. The M. M. Gaige—Kinsey records, perhaps for similar reasons, seem to exist today in private hands; Bancroft, 71; Angel, 31 ff.

HISTORY OF UNION COUNTY, NEW MEXICO

By BERRY NEWTON ALVIS*

Early Settlement and Ranching

THE settlement of Union county can not be regarded as an isolated circumstance, but must be considered as a part of that great westward expansion movement which peopled many western states of the United States during the last quarter of the nineteenth century and the early years of the twentieth century. In 1890 the four states, New Mexico, Arizona, Oklahoma, and Colorado, had a total population of 688,296; the population had increased to 2,987,834 in 1910, and had mounted to 4,290,521 in 1930.¹

Although there was not much in sight for the early settlers of Union county with its semi-arid plains and only an underground water supply, yet the pioneers came to it with as much zeal and enthusiasm as their kinsmen had displayed in going to many other more likely sections of the West.² As nearly all newly settled regions do, Union county drew its settlers from various places, and among them were many remarkable people who have since become prominent elsewhere.

The earliest settlers of Union county located in four different places about the same time. The oldest and largest group of settlers was found in the southern part of the county.³ Another group settled in the northwestern part near the present town of Folsom. By 1885 there were two or three settlers on the Perico creek, near the present town of Clayton. The fourth settlement was in the northeastern part of the county.

In the southern part of the county the Garcia brothers, Jose Manuel, Luis J., Maximo, and Abelino, had settled by

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1. United States, *Census*, 1930, Vol. I, p. 10 (Population).
2. George Hubbard, *Interview*, February 10, 1931.
3. Union County, *Patent Records*, A, pp. 1-100.

1880, and were engaged in the cattle and sheep business. Not far from the Garcia brothers lived James McDonald, James Carter, Thomas O. Boggs, Candido Garcia, N. M. Foster, James H. Lee, J. S. Holland, and J. W. Snyder.⁴

Most of these settlers were employed by the Prairie Cattle Company, a large Scottish corporation that had gotten control of the best watering places in the northern, central, and southern portions of what is now Union county by 1881.⁵ Control of the watering places gave them control of most of the land. Their headquarters for New Mexico was on the Cimarron, near the Colorado-New Mexico line.⁶ This corporation had bought out a few "squatters" who had settled on the land with the best water. These "squatters" either left the locality or went to work for the Prairie Cattle Company. In this manner the company secured control of most of the area now embraced by Union county. Near the headquarters of this corporation were three other ranchers—Doctor T. E. Owen, F. D. Wight, and Oscar W. McGuiston.⁷

In 1885 only one person lived between the present post office of Clapham and the Hundred and One ranch on the Cimarron river. At the Pitchfork ranch, situated three miles west of the present town of Clayton, Doctor T. E. Owen, whose home ranch was on the Cimarron river, ten miles above the town of Folsom, bought in 1883 several pre-emption claims of one hundred sixty acres each.⁸ On one of these subdivisions he built a three-room adobe house. The lumber, shingles, flooring, and doors for this house were freighted one hundred twenty-five miles from Trinidad by wagon. Here Doctor Owen established a supply depot and store for the convenience of his round-up wagons and cowboys. This house was still standing in 1933, near the site of the Clayton water works. One room, that nearest Perico creek, was used as a kitchen, the middle room as sleeping quarters, and the north room as a store. This north room

4. Mrs. Francilla Bangarter, *Interview*, January 5, 1934.

5. Union County, *Records of Warranty Deeds*, A, p. 392.

6. A. W. Thompson, *Interview*, January 12, 1934.

7. Union County, *Patent Records*, A, pp. 87-96.

8. T. E. Owen, *Interview*, January 12, 1934.

sheltered the first post office in the Clayton district.⁹ It was established November 9, 1886, under the name of Perico, with Homer E. Byler as postmaster.¹⁰

Until the railroad was built through Clayton, the Perico post office was supplied from Tramperos, forty miles distant, on a weekly schedule. A few letters and newspapers addressed to Byler and Edward Sprague constituted the mail. They were the only settlers then living in this large area. For a year or more after this post office was established, Byler sent a man on horseback to Tramperos Plaza once each week for the mail.¹¹

In 1885 the country between the Pitchfork ranch, on the Perico, and the Cimarron river was an unfenced, uninhabited, well grassed domain belonging to the Federal government, which exacted no charge for grazing thereon.¹² Perennial streams were numerous over this area, including the Seneca, the Corrumpa, the Rafael, Road Cañon, the Carrizozo, and others. Thirty miles northeast of the Perico, in the then unsurveyed "No Man's Land," lived Francisco Lujan, who had recently driven a flock of sheep there from Mora, New Mexico.

In 1886 a rough road or trail led from Byler's store to the Cimarron river. This road was used chiefly by round-up wagons and trail herds, moving from the south during the summer months. Following the narrow valley which lay northeast of Byler's store, the road climbed the rocky mesa half a mile southwest of Clayton and bore off toward the northeast. One branch of it crossed the Corrumpa at the old Santa Fe trail crossing, while another branch of it entered "No Man's Land," crossing the Corrumpa near the present ranch of Juan C. Lujan and following the Carrizozo down to the Hundred and One ranch. It was a long trek, the ride from the Perico to the Cimarron. Not a human habitation then existed thereon for fifty miles. H. C. Abbot's ranch at "Dish Rag" camp, established near the falls

9. A. W. Thompson, *Interview*, January 12, 1934.

10. Tom Gray, *Interview*, September 18, 1933.

11. E. S. Osgood, *The Day of the Cattleman*. Minneapolis: University of Minnesota Press, 1927, pp. 182-183.

12. Lorenzo Lujan, *Interview*, January 14, 1934.

of the Corruppa in 1884 or 1885, was too far north to be passed by travellers going from Perico to the Cimarron.¹³

This old road met and crossed a newly laid out road a mile or two before reaching the coal banks on the Seneca. The new road led from Trinidad, Colorado, to Buffalo Springs, Texas, one hundred and thirty miles. Over it was hauled, in wagons drawn by mules or horses, tons of barbed wire which the Capital Syndicate Company used in the construction of its fences erected between New Mexico and Texas and between Texas and "No Man's Land," in 1883. Their post cutters established camps in the brakes on the Cimarron, Carrizozo, Carrizo, and Tramperos water-courses.¹⁴ Mule teams were constantly on the move from these camps to the New Mexico-Texas line. The enterprise was a large one, and the requirements of the Syndicate Company as to the size of posts and the mode of construction were very exacting. Many of the cedar posts on this north and south fence are standing today (1933) after fifty years of battering by the elements and molestation by settlers and livestock.¹⁵

One of the earliest settlers in what is now known as Union county was Horace C. Abbot, who now (1932) resides in Las Animas, Colorado.¹⁶ In October, 1878, Abbot trailed seven thousand sheep, belonging to Abbot Brothers, from Trinidad, Colorado, to northeastern New Mexico. He was looking for a new range where these sheep could be grazed and for a place where he could establish a ranch. The following extract from the *Clayton News* gives Abbot's own version of this experience.¹⁷

On the 19th day of October 1878, . . . I crossed over Trinchera Pass, and for the first time saw Sierra Grande and the Rabbit Ears. I owned no ranch—just kept going from one place to another, where I could range my sheep. My outfit consisted of one saddle horse and eight burros, four burros for each camp. Two of my herders were Leandro Romero and Agapito Mares, later for years residents of the Pennevetitos country.

13. *Ibid.*, January 12, 1934.

14. A. W. Thompson, *Interview*, January 16, 1934.

15. S. L. Miller, *Interview*, February 4, 1932.

16. *Clayton News*, September 28, 1932, p. 3.

17. *Idem.*

Among the ranchmen and sheep owners who were living on the upper Carrizo (northeastern New Mexico) in 1878 were Frank E. Sage, and below him were Adams & Williams. Both Adams and Sage had their families with them. 'Old Man Handy,' a brother-in-law of George W. Thompson, the cattle king of southern Colorado, was running sheep on the Perico. (Handy's headquarters was the present Otto ranch five or six miles northwest of Clayton). Colonel Beatty was running about ten thousand sheep on the Pennevetitos. His partner was Mr. Goodwin. Henry White, a native of Massachusetts, entered the sheep business in 1879 on the Alamositas, twenty miles northwest of Clayton. Briggs & Leighton who had been partners with F. D. Wight in the sheep business divided their sheep and were in 1880 ranching on the upper Corrupma. W. A. Barney was at that time located near them. We bought from a Mexican the claim where we established headquarters at the head of Pennevetitos Creek. Here we kept a small store. We wintered our sheep at Middlewater (Tramperos) on the line of Texas and New Mexico. I can safely say I built the first house in the Pennevetitos country, and I do not believe any other persons were living there at that time (1879). We sold our sheep and Pennevetitos ranch in 1882. In 1884 Frank Unruh the surveyor, who was living on the Travajo, located me at Dish Rag ranch (Corrupma). This was my pre-emption entry. Here I built a very nice stone house in which I lived until 1867 when I sold my three thousand ewes to Henry White.

After the completion of the Colorado and Southern railroad, in 1885, the settlers came to Union county in larger numbers. By 1890 there were more than six hundred people. In 1900 the county had 4,528 inhabitants.¹⁸ This number had increased to 11,404 in 1910, and to 16,680 in 1920.¹⁹ A reduction in the area of the county in 1923 reduced the population by approximately one-third.

Like pioneers in other states, those of Union county were so far removed from any means of transportation, save ox wagons, that they had to depend upon the country and its resources for their food and shelter.²⁰ Their houses could not be built of logs, since there were not many trees from which to obtain them; but they could be built easily and cheaply by digging down into the ground. Houses were often built of sod, which was obtained by use of a sod plow that would turn over a strip of turf six or eight inches wide

18. United States, *Census*, 1930, Vol. I, p. 731.

19. *Idem*.

20. George Hubbard, *Interview*, February 4, 1932.

and of any thickness desired, usually three or four inches.²¹ This strip of turf was cut into blocks from eighteen to twenty-four inches long which were laid one upon the other, without any mortar to hold them together, to form the walls. A certain amount of lumber had to be used in making the roof. Sometimes a ridge pile and brush from the brakes were used, but usually some lumber was brought from the railroad.²² Such houses as these were called "dugouts," and most of the early settlers lived in them, for a time at least.

The settlers who lived in these "dugouts" scattered over the prairie were many times practically secluded from the rest of the world, as people rarely ever passed their way. Sometimes the man of the house would be gone a great part of the time to freight for some one or to work on some nearby ranch. The women and children, who were left at home, were glad of an opportunity to communicate with the outside world if some passerby should chance to come their way.²³

Nearly all of the early settlers kept a few head of cattle and allowed them to run out on the open or unfenced land all about them. At first these settlers did not farm, but depended entirely upon the grass for cattle and horse feed. They believed it to be too dry to raise any kind of crops; but farming was gradually begun, so that by 1890 each man raised a little feed with which to carry his horses and a few cattle through the winter.²⁴ The cattle, sheep, or other livestock could be driven to market with but very little cost to their owners.

The people suffered many hardships and privations. They seemed to realize that such things could be expected on any frontier. They were always ready to help a friend or neighbor even though they had to neglect their own interests.²⁵ The small cattlemen in Union county from 1890 until 1900 let their cattle range together. They all worked together in the spring round-up to get all the cattle gathered

21. *Ibid.*

22. *Ibid.*

23. Mrs. George Hubbard, *Interview*, February 12, 1932.

24. *Ibid.*

25. Mrs. George Hubbard, *Interview*, February 4, 1932.

up and correctly branded. A foreman was appointed from among them and the others worked under his orders. Thus the work was quickly and easily done, and ranchmen were near at hand to represent their interests.²⁶

Everyone was hospitable, the county being noted for many years for its widespread hospitality. Whenever a person left home, his door and gate were never locked. He always expected any passerby to stop and help himself to anything that he might need. If a man was very far away from home when night came on, he would stop at the first house or dugout that he came to, and would be cordially welcomed and lodged for the night regardless of how crowded the conditions of the home might be. The people were always glad to keep a traveler in order that they might learn something of what was happening elsewhere. If no one was at home, the visitor would put his horse in the corral and feed him, spending the night as though he were at home. The people were ever willing to trust each other with their property, rarely if ever losing anything through theft. The freighters would often be forced to leave a wagon or two on the trail due to rain or other bad weather conditions. The driver would merely unhitch one of the wagons and leave it by itself, expecting to return at his convenience to get it without fear of its being molested in the least.²⁷

The potential danger which the early settlers feared most was the prairie fire.²⁸ When the grass had ripened or had died on account of the dry weather, it was very easily fired. Should it ever be set on fire and the wind be from the right direction, it would mean widespread disaster. The ranchers fought fire by killing a calf or a cow and dragging the carcass, by means of a rope attached to it and to the pommel of a saddle, along the line of fire to put it out. The cowboys also used their "slickers," which were always on their saddles, to fight with if a cow was not near. They always went to help fight the fires for miles around, not only to help the other person, but also for self-preservation. Fires

26. Colonel Jack Potter, *Interview*, February 18, 1934.

27. *Ibid.*

28. This discussion is based upon an interview with S. L. Miller, March 12, 1933.

were usually fought in such a way as to narrow them down as they burned on, and finally to bring them to a point where they could be extinguished. The early settlers built fire guards to protect their houses and other buildings, and they also kept a large strip of land plowed around such buildings. Many times they would set backfires to stop or check the main fires. Everyone knew fires were dangerous, once they were started; therefore, they were guarded against with all possible care.

A diversion which was enjoyed by almost everyone was the occasional dance. Dances were given, as a rule, at some ranch house where there was enough room and good floors to dance on. An invitation was always sent out to everyone in the surrounding country to attend. A dance usually lasted for two or three nights. It was customary to dance all night and sleep during the day. Good food was always prepared, and there never failed to be enough for all.²⁹

Most of the settlers before 1880 came from the Eastern states, but since that time, most of the settlers have come from Kansas, Oklahoma, and Texas.³⁰ More than half of the population in 1930 had come from Texas.³¹

The cattle industry, which is one of the oldest industries of Union county, was carried on in much the same way as in other regions where the open range was used. These features included the use of the brand, range riding, and the round-up. The central figure was the picturesque cowboy. On the open range livestock from different ranches often mixed; but all questions of ownership were settled in the round-ups, where calves were branded with the same brands as their mothers and both were returned to their owner. This system of doing business was all right where honesty prevailed, as it usually did among the cattle growers.³² The honesty of the ranchers themselves was not questioned; but numerous wandering fortune-seekers, knowing the high value of cattle, began to make a practice of stealing cattle from the range. This practice was known as "rustling."

29. Sam L. Miller, *Interview*, March 12, 1933.

30. Union County, *Record of Brands*, A, pp. 1-100.

31. United States, *Census*, 1930.

32. John Springs, *Interview*, November 4, 1931.

There is no record of any ranching in what is now Union county before 1874. In that year four brands were recorded.³³ The first thing which the early rancher did was to record his brand with the brand recorder of the county. This gave him protection against the "rustlers" and a means by which he could locate his stock. Each rancher advertised his brand in the county newspapers.³⁴

The first ranching in Union county was on a small scale by individuals who had "squatted" on the land containing the best water holes.³⁵ All of Union county before 1881 was government domain. A man would settle at a good water hole and claim all of the grazing land between his home and a point half-way to the next water hole. The first patent that was granted to any land in the present area of Union county was in 1881.³⁶ In that year eighteen patents were granted by President Garfield and President Arthur. Each of these patents was for one hundred sixty acres of land. Some twenty patents were granted in 1882, and thirty-two in 1883. By this time most of the good water holes had been taken up. Many of these early ranchers were from England, Scotland, and Germany.³⁷ Some of the men had been hired by large cattle companies to settle and make a branch headquarters for their ranch.

Among the large concerns operating in Union county, the Prairie Cattle Company was outstanding. This company had a good business until the late 'nineties, when settlers occupied the land which had been free range territory.³⁸ It sold most of its holdings in 1901, 1902, and 1903 to settlers. At one time the Prairie Cattle Company controlled most of the range in Union county between the Canadian and Cimarron rivers.³⁹ The Hundred and One ranch "ran" cattle in the northeastern part of Union county; and the XIT ranch of the Capital Syndicate Company had cattle in the southeastern part of the county in 1880. The Garcia brothers con-

33. Union County, *Record of Brands*, A, p. 1.

34. *Ibid.*

35. Union County, *Patent Record*, A, pp. 100-200.

36. Union County, *Patent Record*, A, p. 100.

37. Union County, *Patent Record*, A, pp. 1-384.

38. Dan Taylor, *Interview*, May 4, 1934.

39. Union County, *Records of Warranty Deeds*, A, p. 392.

trolled most of the southwestern part of the county.⁴⁰ In the northcentral part of the county were individual ranchmen, such as H. C. Abbot, Leighton and Briggs, F. D. Wight, W. P. Duncan, and B. F. Smith.^{40a} In the southcentral part of the county, on the Pennevetitos, lived a few families who had sold their interests to the Prairie Cattle Company.⁴¹ The southern part of the county was controlled by the Illinois Live Stock Company.⁴² Doctor T. E. Owen controlled the northwestern part of the county, and the western part of the county was controlled by Senator S. W. Dorsey, who sold out to the Palo Blanco Cattle Company in 1894.⁴³ The range cattle industry was a flourishing business as long as the price of beef was high and the grass was free; but as the country gradually filled up with homesteaders, the range cattle business came to an end.

By 1885 the cattle business was on the decline and the sheep business was getting a good start. Mateo Lujan and Pedro L. Pinard had driven a few thousand sheep from Mora county to Beaver creek, near the Oklahoma line.⁴⁴ By 1884 Christian Otto and Claus Schleter drove four thousand sheep from California and settled on the Tramperos, in the southern part of Union county. Later Otto became the largest sheep owner in the county. At several times his flock numbered over one hundred thousand head.⁴⁵

As a rule there were from ten to twenty men employed on the larger ranches. The cowboy's or sheepherder's equipment consisted of a "six-shooter," a Winchester, and a good supply of cartridges. No feed for the cattle was raised by farming, but the buffalo grass and the lake grass frequently grew large enough to be cut and stacked for feed for the cow ponies and a few cattle.⁴⁶

It can be seen that ranching in Union county on a large scale did not endure very long. The largest ranches of the

40. Union County, *Record of Brands*, A, p. 460.

40a. Union County, *Record of Brands*, A, p. 462.

41. Union County, *Record of Warranty Deeds*, A, pp. 392-486.

42. Mrs. F. Bangerter, *Interview*, September 26, 1833.

43. *The Chronicle-News* (Trinidad, Colorado), February 9, 1930.

44. Lorenzo Lujan, *Interview*, January 12, 1934.

45. Christian Otto, *Interview*, September 8, 1934.

46. Colonel Jack Potter, *Interview*, January 16, 1934.

county lasted through a period of from ten to twenty years in connection with the range cattle industry. Of course, it was present for several years longer, but was never a potent factor to be dealt with as a big institution similar to those of other sections of the country. Although it was short-lived, it served its purpose well in its many pioneering activities and its presence there to induce more people to come to the county. With its level prairie, fertile soil, and healthful climate, Union county was destined to be the home of many, rather than a few, inhabitants who would till its soil and find a living within its bounds. The cattle industry then was left to the small-ranch farmer, who lived on his land and cared for his interests personally, and gradually made room for more and more settlers until he became a farmer or a sheep rancher.⁴⁷

The Organization of Union County

Soon after the organization of the Clayton Town Company, a movement was launched for the creation of a new county. In 1888 Colfax and Mora counties stretched from their present western boundaries in the mountains toward Taos to the Texas line. Springer, which was the county seat of Colfax county, was one hundred miles from Clayton, while Mora, the county seat of Mora county, was one hundred twenty-five miles from the settlement along Tramperos creek.¹

The boundary between Mora and Colfax counties then crossed Tramperos creek one mile north of the Bushnell ranch. It crossed Leon creek just south of Tabor mountain, four miles north of the present post office of Clapham. Thence the line ran eastward to the New Mexico-Texas boundary, through a country inhabited only by antelope, mustangs, and cattle.² Ranchmen and settlers in the Ute creek country near Gallegos were within a third county, San Miguel. Before the construction of the Denver, Texas and Gulf railway they purchased supplies at Las Vegas.³ Official matters and attendance at court had to be transacted at the

47. United States, *Census*, 1930, Vol. I, p. 420 (Population).

1. Morris Herzstein, *Interview*, October 15, 1928.

2. Tom Gray, *Interview*, September 14, 1933.

3. Mrs. John Knox, *Interview*, December 24, 1933.

respective county seats of Colfax, Mora, and San Miguel counties, although residents within portions of these counties were much nearer the railway at Clayton. Naturally, great inconveniences were experienced by the citizens of Clayton who had to go to Springer for the transaction of business. Later the official headquarters of Colfax county was established at Raton.

The move for the creation of a new county to be located in the northeastern corner of New Mexico, adjoining Colfax and Mora counties from north to south along the 104th meridian to the line between townships No. 18 and No. 19, thence southeast along the eastern side of the Pablo Montoya land grant,^{3a} and finally terminating at the New Mexico-Texas line east of the Baca location,^{3b} was seriously considered in 1889.⁴ Portions of this district are now within the counties of Union, Harding, and Quay; formerly the same area comprised parts of Colfax, Mora, and San Miguel counties.

It is probable that the prime spirit in the new county movement was John C. Hill—stockman, man of means, and principal owner of the Clayton townsite—who was a resident of Clayton in 1889. Hill had the reputation of carrying out with success such enterprises as he applied himself to seriously.

Meetings were held and discussions freely entered into as to the wisdom and feasibility of demanding from Colfax, Mora, and San Miguel counties⁵ portions of their territory in the interest of a new county. It was a bold undertaking. Colfax was asked to cede an area sixty miles from east to west and about the same distance from north to south. Mora and San Miguel counties were asked to relinquish a smaller area, perhaps fifty-five miles from east to west by thirty-five miles from north to south. Many large ranches on the Cimarron river and Rafael creek and their tributaries, the towns

3a. The Pablo Montoya land grant was made in 1840, and included four hundred square miles of land southwest of Union county.

3b. The Bacas had a claim to the Las Vegas grant, but the federal government gave this grant to the town of Las Vegas in 1860, and gave the Bacas two hundred seventy-five square miles of land south of Union county.

4. See the New Mexico House and Senate *Journals*, 1889.

5. J. J. Heringa, *Interview*, September 29, 1931.

of Clayton and Folsom, sixty-five miles of railway, and other taxable property would be lost to Colfax county, while the herdsmen, cattle companies and ranchmen in the Tramperos, Ute Creek, Tequesquite and Canadian districts would no longer pay taxes to the counties of Mora and San Miguel. Differences of opinion, too, might be expected within the proposed lines of the new county, and rivalry was almost sure to appear over the designation of the county seat.^{5a}

Several impromptu meetings were held, in which John C. Hill and the citizens of Clayton got together. Attending these meetings were prominent men living south of the railway, such as Luis F. Garcia, Francisco Miera, and J. S. Holland, from Tramperos creek. The Vigil family and Jose Manuel Gonzales came from Bueyeros. T. E. Mitchell and the Baca brothers (Tequesquite, Francisco, and Emeterio) and Eugenio Gallegos,^{6a} came from Gallegos post office. Mateo Lujan and his partner, P. L. Pinard, both prominent citizens and large sheep owners, lived on the Muerto.⁷ Many smaller ranchmen attended these meetings, both native sons and newcomers. At these gatherings the opinion of each was freely invited. All wanted a new county and every locality wanted the county seat. Folsom^{7a} laid high claim to this distinction, because of its aspiration to be the city beautiful and a summer resort, with a tourist hotel already under way and a land office established.⁸ Luis Garcia pictured Tramperos as appropriate for the county's capital; while J. M.

5a. Tom Owen, *Interview*, September 29, 1931.

6a. The Spanish-Americans have not had much influence on the development of Union county. This is due to the fact that there are no railroads, streams or valleys connecting the county with the rest of New Mexico. The nearest early Spanish settlement to Union county was Mora. Mora is one hundred fifty miles from the center of Union county. Poor communications and the dangers from the Plains Indians kept the early Spaniards from settling in the county. The people of Union county are influenced more by the people of the plains and the people of Colorado than they are by the people of New Mexico. They read Colorado and Texas newspapers because they can receive them the day they are published; whereas New Mexico newspapers are conveyed by way of Trinidad, Colorado, or Amarillo, Texas, in order to reach Union county. The county was not included in any of the Spanish or Mexican land grants. Texas influence has been strong since the beginning of permanent settlement, most of the immigrants to Union county having come from that state.

7. John Knox, *Interview*, January 6, 1934.

7a. In 1889 Folsom, named in honor of President Cleveland's bride, was a growing and active village with wide-awake citizens and leaders. Tom Owen, *Interview*, September 29, 1931.

8. United States, *Statutes at Large*, December 18, 1888.

Gonzales, Augustin Vigil, Lujan, Pinard, and the Baca brothers viewed Bueyeros as a good location. Francisco Gallegos and his brothers thought Rincon, Colorado, should become the county seat.⁹ While these factions did not agree as to the location of the county seat, there was unanimity for the new county. Clayton was backed by John C. Hill, Senator G. W. Dorsey, E. R. Fox, S. T. North, J. S. Holland, H. E. Byler and others residing there. Clayton was on the railroad; hence they thought the county seat should be located there.¹⁰

After many preliminary discussions by the contending factions, a meeting was called in the latter part of 1889 to be held at the ranch of Don Jose Manuel Gonzales on the Alamosa.¹¹ To this meeting came the leading men of Tramperos, Gallegos, Bueyeros, and Clayton. The convention was soon in the midst of that wide and lavish hospitality which was characteristic of the times. Clayton, through the logical pleas of its delegates, was selected for the county seat; Garcia, the Bacas, the Vigils, the Mieras, and Gallegos gave way to the preponderance of argument that was advanced due to its being situated on the railroad.¹² After two or three days of conviviality, interspersed with good will and no little oratory, every man pledged himself to carry on toward the creation of a new county with Clayton as the seat of its government.¹³

In 1889 J. S. Holland was a member of the New Mexico Territorial legislature (lower house) from Mora county.¹⁴ He lived then on the so-called IL ranch, a mile south from the Tramperos. His nephew, Thomas S. Holland, a surveyor, was associated with Hill and others in the Clayton Town Company, not only as stockholder, but as agent for the sale of lots. In the Territorial legislature, which convened in the winter of that year, a bill was introduced by J. S. Holland looking to the creation of a county which was

9. James Taylor, *Interview*, May 26, 1934.

10. O. T. Toombs, *Interview*, October 6, 1932.

11. The Clayton group wanted the support of Gonzales and his friends, in part because the majority of the State legislators were Spanish-Americans.

12. F. C. de Baca, *Interview*, November 17, 1933.

13. *Ibid.*, January 5, 1934.

14. New Mexico, *Blue Book*, 1889, p. 122.

to follow practically the same boundaries that were later prescribed for Union county.¹⁵ But such violent opposition to this bill sprang up from Colfax and Mora counties, that it was tabled indefinitely. The Clayton enthusiasts, however, refused to abandon the move for a new county.

In the legislature of 1890 and 1891 Paz Valverde, later of Clayton, represented Colfax and Mora counties in the Territorial council. Valverde was a resident of Springer. J. S. Holland had been re-elected to the lower house, and both were pledged to support a bill for the creation of Union county. In the legislature of that session a bill, prepared by Attorney L. C. Fort of Las Vegas, was again introduced in the interest of a new county comprising portions of Colfax, Mora, and San Miguel counties. A name for the proposed county was much discussed and various suggestions were advanced. It was finally decided to call the county Union, from the fact that it was to embrace (unite) portions of three older counties.¹⁶

With the presentation of L. C. Fort's bill, Clayton's supporters went to Santa Fe and there remained for several weeks. Within the legislative halls, gambling establishments, saloons, and various public places, Union county was talked, advocated, and promoted. Outside of Springer, Raton, and Mora, the Union county bill was a popular one. E. W. Fox, who was active in Republican politics and had been a member of a former constitutional convention seeking statehood for New Mexico, was in Santa Fe along with John C. Hill, Doctor S. T. North, and J. R. Curren, editor of the *Clayton Enterprise* (Clayton's first newspaper). Money for necessary details had been subscribed, principally by John C. Hill and the Clayton Town Company.¹⁷ Representatives of Folsom and of Raton, both from Colfax county, tenaciously opposed the bill. Mora county also lined up with the opposition. The Clayton promoters had secured the support of two leading Territorial newspapers, the *Las Vegas Optic* and the (Santa Fe) *New Mexican*. Albert B. Fall, later Sec-

15. New Mexico, *House Journal*, 11th Session, December 14, 1889, p. 127.

16. New Mexico, *House Journal*, 12th Session, December 12, 1891, p. 212.

17. Morris Herzstein, *Interview*, April 6, 1928.

retary of the Interior, William C. McDonald, subsequently the first governor of the State of New Mexico, and T. D. Burns, of Rio Arriba, had promised to support the bill. Its passage looked hopeful. Finally a vote was taken in the spring of 1891, with Captain L. C. Fort still supporting the bill. It passed the council safely.¹⁸

Meantime violent opposition had developed in the lower house, with the probability of a close vote there. On Monday of the week following the passage of the bill by the council, it was called up by Representative Valdez of Springer and defeated.¹⁹ Again the creation of Union county was postponed. It was indeed a saddened group of men, a disappointed delegation, which returned to the little frontier town of Clayton; but they were still fired with a determination to push their cause to a finish.

From 1891 to 1893 Clayton experienced a steady growth, although it was largely a shipping and supply town. From Clayton to the legislature of 1892 went a stronger and more determined delegation, with increased confidence that the third Union county bill would pass.²⁰

Paz Valverde, still in the Territorial council from Colfax county, was again pledged to support a bill for the creation of Union county.²¹ Hard work was performed for some weeks and, when the bill was brought forward in the upper house, favorable action was taken.²² Representatives from Colfax county continued to oppose and block its passage in the lower house. They were aided by men of Mora county; the San Miguel county delegation was passively active.²³ Considerable money was spent during the session, and it is probable that its influence was one of the determining factors in the final vote.²⁴

Finally, in the early days of February, 1893, the Union county bill, having already passed the council, was called up

18. New Mexico, *Senate Journal*, 12th Session, 1891, p. 98.

19. New Mexico, *House Journal*, 12th Session, 1891, p. 241.

20. *Clayton Enterprise*, December 2, 1892, p. 1.

21. *Springer Stockman*, January 2, 1893, p. 2.

22. New Mexico, *Senate Journal*, 13th Session, 1892, p. 112.

23. *The Springer Stockman*, January 2, 1893, p. 2.

24. C. F. Coan, *A History of New Mexico*, Chicago: The American Historical Society, Inc., 1925, Vol. I, p. 570.

by the Speaker of the House.²⁵ Here its fate was awaited with deep concern, for it was conceded that it would be passed, if at all, by a narrow margin. On the roll call a tie vote resulted. Hardly had the result been announced when Representative McMullen of San Miguel county arose in his seat and requested that his vote be changed from "nay" to "yes." Thus Union county had come into being.²⁶

With the signature of Governor L. B. Prince, on February 23, 1893, Union county began its career.²⁷ Governor Prince soon appointed county officials, some of whom were not wholly acceptable to Union county leaders because of their political affiliations; however, these officials were found to be well qualified for their positions.²⁸

Soon after its officials qualified for office, the county commissioners met in Clayton for the transaction of business. Hearings as to the wish of Union county citizens with respect to the site of a courthouse, which it was proposed should be built with as little delay as possible, were ordered and held.²⁹ Public opinion, in the early days of this new county, was strongly in favor of locating the courthouse on the east side of the railway, where the commercial activities of Clayton were centered.³⁰ The influence of the Clayton Town Company, which desired to exploit the western portion of the town in which many large residences had been constructed, finally prevailed, and a block of lots was purchased by the county.³¹

A contract for the first courthouse in Clayton was awarded to a contractor from Las Vegas, New Mexico.³² This building was a two-story edifice. The district court room was on the second floor. The first term of the district court, Union county, convened in September, 1893.³³ This first building was unroofed and seriously damaged by a gale

25. New Mexico, *House Journal*, December 7, 1893, p. 126.

26. *Idem*.

27. New Mexico, *Statutes*, 1893, Chap. 49, p. 553.

28. Christian Otto, *Interview*, January 9, 1934.

29. Union County Commission, *Minutes*, A, pp. 1, 2, 3.

30. *Clayton Enterprise*, March 12, 1893, p. 1.

31. Union County, *Records of Warranty Deeds*, A, p. 183.

32. John Hill, Jr., *Interview*, January 3, 1934.

33. Union County, *Court Minutes*, A, p. 1.

of tornado proportions which swept much of northeastern New Mexico on October 10, 1908.³⁴ It did great damage to property, and took the lives of several homesteaders living outside the village of Clayton. It was the worst gale ever experienced in this locality, at least according to the testimony of the first settlers.³⁵ Soon after this catastrophe, the present courthouse and jail were constructed.

The Development of Railroads and Industries

In the 1880's railroad building in the West was at its height. The Denver and Rio Grande had been completed from Denver to Pueblo, Colorado, and was pushing its steel arms toward Salt Lake City by way of Tennessee Pass and the Colorado river.¹ In New Mexico there was only one railroad, the Atchison, Topeka and Santa Fe.² In 1884 a company had been incorporated, which planned to construct a line of railroad south from Denver to Fort Worth, and thence to the Gulf of Mexico. The corporation was known as the Denver and New Orleans Railway Company.³

By 1886 track had been built from Ft. Worth, Texas, to Clarendon, Texas. It was the first railroad to be constructed into that sparsely settled district. Another railroad had been built from Denver to Trinidad, Colorado.⁴ By filling in the gap between Clarendon and Trinidad, both northern Texas and northeastern New Mexico would be supplied with much needed railway facilities. Prior to 1886 the vast herds of Texas cattle were driven to Dodge City, Kansas, Granada, Colorado, and Springer, New Mexico, for shipment. Cattle trails to these points from Texas were sometimes over five hundred miles in length.⁵ A shorter haul than any then existing from Gulf cities to Denver would be established on completion of this new railway.

Actual work of grading the Ft. Worth line, on which

34. *Clayton Citizen*, October 12, 1908, p. 1.

35. *Idem*.

1. *Denver Evening Times*, December 15, 1887, p. 4.

2. Coan, *A History of New Mexico*, Vol. I, p. 445.

3. *Denver Republican*, March 27, 1888, pp. 1, 4.

4. *Idem*.

5. Joe Mills, "Early Range Days," *Colorado: Studies of Its Past and Its Present*, pp. 91 ff. Boulder, Colorado: University of Colorado Press, 1930.

was to be established the town of Clayton, was well in progress in the summer of 1887, and by September of that year the connecting links which were to bind Texas with north-eastern New Mexico and Colorado were about to be welded.⁶ The road ran southeast from Trinidad to the New Mexico line, and thence through the wooded brakes adjacent to Emery Gap. Thence it ascended from the Cimarron valley to the station of Des Moines, where it reached the highest point between Denver, Colorado, and the Gulf of Mexico, 6,632 feet above sea level. From the Cimarron river to the Canadian river no perennial stream was crossed. The railroad's course then lay along a high, well grassed plateau, devoid of timber.

Among those who in 1886 owned vast landed interests in northeastern New Mexico was Stephen W. Dorsey⁷ who had been United States Senator from Arkansas from 1873 to 1879. His home ranch was located at Chico Springs, twenty-five miles east of Springer. He came to New Mexico in 1887. His cattle were of a superior quality and grade, and in the 'eighties they were scattered over the whole of north-eastern New Mexico. He had acquired thousands of acres of watered lands along the Palo Blanco, Ute creek, Corrupa creek, Rafael creek, Seneca creek, and other streams, some of which were seventy-five miles from his home ranch.⁸ Dorsey's ranch was the scene of many regal functions and festive gatherings. Here men of national and territorial prominence gathered. For Colonel Robert C. Ingersol, who had defended Dorsey successfully in the trial growing out of the star route mail frauds in Washington, he constructed an ornate log house half a mile from his home ranch at Chico Springs. The noted attorney and orator spent part of one summer at this house. Dorsey's large home, built of cut stone and surrounded in summer by lawns and gardens, shrubbery and flowers, was the show spot of northern New Mexico.⁹

Among Senator Dorsey's many acquaintances was General Granville Dodge of New York, construction manager of

6. *Denver Republican*, March 28, 1887, p. 4.

7. Union County, *Record of Warranty Deeds*, A, pp. 18ff.

8. *Ibid.*

9. T. E. Owen, *Interview*, January 10, 1934.

the Denver and Ft. Worth railroad.^{9a} John C. Hill, later of Clayton, was in 1887 and some years prior thereto range manager of the Dorsey interests. Hill was a very active and ambitious young man. In a conference with his employer, it was suggested that a town might be established on the new line of railroad then being pushed across Dorsey's wide cattle range in northeastern New Mexico, which would be an attractive cattle shipping and general merchandise supply station for southern New Mexico and the Texas Panhandle.¹⁰ To this proposition Dorsey agreed to give his co-operation. He said that he expected to visit New York soon, where he would lay the plan before General Dodge and ask for the railroad company's co-operation in the undertaking.¹¹

From New York in the winter of 1887 Dorsey advised Hill that he had conferred with General Dodge who had promised him that, should a townsite be established on his new line near the Texas-New Mexico boundary where water could be obtained, he would designate it as a division point, construct a round house, install a turntable, and make necessary improvements.¹² The site of the present town of Clayton was finally chosen for the proposed new village. This location was agreed upon for four reasons. It was about half way between Trinidad, Colorado, and Amarillo, Texas, at both of which points divisions were to be established. It would be a convenient shipping point for cattle, sheep, and wool from southeastern New Mexico, since there was no other railroad in that section of the Territory. The proposed site was on an approximately level stretch of the railroad right-of-way, while north and south thereof were grades unsuitable for the location of yards and side tracks. A mile and a quarter north from this site was a spring where the railway company could install a pumping plant and force water to its track when the road should be completed to that point. This was the only surface water of permanence near

9a. General G. M. Dodge was Construction Manager for this road, *Denver Republican*, March 28, 1883, p. 10.

10. *Ibid.*

11. John Hill, Jr., *Interview*, November 1, 1932.

12. *Ibid.*

the surveyed railway line between the Cimarron and Canadian rivers.

As the work of grading the new lines of railway proceeded southward, Hill made frequent trips from the Dorsey ranch at Chico Springs to the site of the new town, which was located on Section 34, Township 26 North, Range 35 East.¹³ In the late fall of 1887, the Clayton Town Company was organized under the laws of the Territory of New Mexico.¹⁴ At the suggestion of Senator Dorsey, the new town was named Clayton for the Senator's son, Clayton C. Dorsey, who is now (1933) a prominent attorney of Denver, Colorado. The Clayton Town Company was originally composed of Dorsey, Hill, Holland, and Perrin,¹⁵ the last named being a civil engineer.

The decision having been made as to the site of the town of Clayton, title to its location was the next matter to receive consideration. The district through which the railroad right-of-way passed was unoccupied government domain. Quick ownership of any portion of this domain could be acquired by filing "land scrip" claims.¹⁶ Land scrip, the issue of which had been authorized by Congress as additional compensation or bonus to the veterans of the Civil War, could be exchanged for public lands without compliance with the requirements of the Pre-emption and Homestead acts as to residence and improvements. Under the Desert Land Act of 1877, a soldier who had not acquired title to a full 160-acre homestead might obtain enough scrip to make up the deficiency.¹⁷ Through a Mr. Easley in Santa Fe, who dealt in land scrip, Hill and his associates bought forty acres of "Soldier's Additional Scrip," owned by Sion Shaddox of Missouri. This was filed on the northeast quarter of the northeast quarter of Section 34, Township 26 north, Range 35 east, New Mexico Meridian, through the Santa Fe Land Office, on November 18, 1887.¹⁸

In 1887 the United States Land Office required the appli-

13. Union County, *Record of Warranty Deeds*, A, p. 254.

14. Union County Commission, *Minutes*, B, p. 82.

15. *Ibid.*

16. United States, *Statutes at Large*, March 3, 1877.

17. United States, *Statutes at Large*, March 3, 1877.

18. Union County, *Record of Warranty Deeds*, A, p. 254.

cant for a Soldier's Additional Homestead entry to appear in person, together with his wife if he were married, before the local land office, and there file application for the desired tract.¹⁹ Such requirements were later modified.²⁰ After buying the scrip, it was necessary for Shaddox and his wife to journey from Missouri to Santa Fe, the expense of the trip being borne by Hill and his associates.²¹ In this way immediate title was secured to the original unit of the Clayton Townsite Company's land,²² although the railroad was not completed through the new town for several months. Thomas S. Holland, assisted by surveyor C. M. Perrin, laid out the streets, lots and blocks of Clayton some time in November, 1887.

The first building constructed in Clayton was erected about the middle of October, 1887. It stood facing south, near the railroad right-of-way, about four hundred feet in a northerly direction from the present Colorado and Southern railway station. It was twelve or fourteen feet square, having a door and a window.²³ It was used by engineer Charles M. Perrin as office and sleeping quarters, and served as his residence on a homestead of 160 acres.²⁴

The lumber contained in the Perrin house was purchased from Thomas O. Boggs, whose sheep ranch was situated on Pennevetitos creek, thirty miles west of Clayton.²⁵ His corrals, pannels, and sheds were purchased by John C. Hill, carefully taken apart by a carpenter, and carted to Clayton to be used in the construction of several early buildings. A long and expensive haul of material from Trinidad was saved through this purchase. Old lumber served well enough for the needs of this new village until after the completion of the railroad. The first three buildings erected in Clayton were constructed from the Boggs lumber.²⁶

In the fall of 1887 the townsite company offered lots for

19. United States, *Statutes at Large*, April 12, 1881.

20. *Ibid.*, May 26, 1890.

21. John Knox, *Interview*, January 5, 1934.

22. Union County, *Record of Warranty Deeds*, A, p. 286.

23. Christian Otto, *Interview*, January 12, 1934.

24. Union County, *Record of Warranty Deeds*, A, p. 286.

25. Christian Otto, *Interview*, January 12, 1934.

26. Morris Herzstein, *Interview*, October 3, 1928.

sale in Clayton. Generous inducements were offered to those who would buy lots and construct buildings. Main street property, naturally, sold for higher prices than any other in town.²⁷ Soon after the first of January, 1888, considerable activity developed and several commercial enterprises were launched, although Byler's store at Apache Springs continued to supply the people with the necessities of life. A week was required to complete a trip from Apache Springs to Trinidad and return.²⁸ Lumber being scarce and expensive in Clayton, many wall tents had been erected. These served as places of business and residences for the first inhabitants of the town.²⁹

On the 13th of January, 1888, George A. Bushnell and Edward W. Fox, former residents of Raton, opened a store in the Perrin cabin with a small stock of general merchandise.³⁰ Their firm name was Fox Brothers, Bushnell, and Company. It was the beginning of a large and, for a time, lucrative enterprise. This firm drew trade from northern New Mexico and the country as far south as White Oak and Roswell. Clayton was to absorb trade which had formerly gone to Las Vegas, New Mexico.³¹ Las Vegas was closer to the Pecos river points than was Clayton, but the road to Clayton was more easily traveled than was the road to Las Vegas. In the fall of 1888 a trail was established from the Pecos valley to Clayton, over which cattle from Roswell, Ft. Sumner, and the Capitan mountains were driven.³² For years, thousands of "longhorns" which had been raised in the southern part of New Mexico and northwestern Texas followed this dust-covered road.³³

About March, 1888, Homer E. Byler moved his stock of merchandise and Perico post office from Apache Springs to Clayton where it was housed in a small frame structure³⁴ with canvas roof, located on the south side of Main street.

27. Union County, *Record of Warranty Deeds*, A, p. 97.

28. R. W. Isaacs, *Interview*, January 12, 1934.

29. *Denver Republican*, March 29, 1887, p. 4.

30. Tom Bushnell, *Interview*, September 14, 1933.

31. *Ibid.*

32. Colonel Jack Potter, *Interview*, January 14, 1934.

33. *Ibid.*

34. A. W. Thompson, *Interview*, January 19, 1934.

This was the first post office in the town, the name being changed on March 23, 1888.

The first hotel was the Clayton House. It was erected in February, 1888, by John C. Hill. It occupied the corner lot by the Isaacs Hardware store.³⁵ This building, a story-and-a-half structure, formerly stood on Rafael creek, on one of the Dorsey ranches. For several years it served as Clayton's only hotel. Its first landlord was Dr. S. I. North, the town's first physician, who in 1892 purchased the hotel and added several rooms. A year or so after the Clayton House had been enlarged, S. A. Dyson, the first minister of the gospel to settle in Clayton, erected on the site of the Big Jo Lumber Company's yard a square, two-story, frame building, which was also used as a hotel. This was called the Phoenix Hotel.³⁶

The Denver and Fort Worth railroad was completed in March, 1888. The first passenger train, which was a so-called mixed train containing a passenger coach, was run from Texas to Trinidad on March 20, 1888.³⁷ The day was hailed as the initial birthday of the new town. A regular schedule was soon maintained on this line, and merchandise that had been freighted in wagons from the nearest available points on the Santa Fe railroad, was now shipped to Clayton by rail.³⁸ Ranchmen from the Tramperos and Ute Creek districts found it more convenient to come to Clayton to trade than to buy in Springer or Las Vegas.³⁹ Roads were quickly laid out both to the north and to the south of the new settlement. The road north to the Cimarron river was laid out by Bill Metcalf, a pioneer of that region. It crossed the Cieneguella near the coal banks, where water was always available; thence it wound along to the Corruppa, which it forded at the old Santa Fe trail crossing, and descended to the Cimarron by way of Road canyon. From the south a great trade at once sprang up. In the summer of 1888 sheep

35. Carl Eklund, *Interview*, December 27, 1928.

36. *Ibid.*

37. *Denver Republican*, March 28, 1888. Several pages of this issue were devoted to this new railroad.

38. Tom Gray, *Interview*, September 26, 1933.

39. J. J. Heringa, *Interview*, January 4, 1933.

owners hauled their wool to Clayton for sale and shipment.⁴⁰

The summer and fall of 1888 saw a large business turning to Clayton.⁴¹ Fox Brothers and Bushnell opened their new building with a \$20,000 stock of general merchandise, hardware, provisions and dry goods, which was stored in a warehouse erected on the railroad right-of-way. It was no unusual sight in 1888 and for a decade thereafter to see four-horse wagons draw up before this warehouse, unload hides, sheep pelts, or wool, and load sacks of corn and flour.⁴² Frequently during the fall and winter, ranchmen were obliged to wait a number of days, or even a week, for shipments of corn to arrive by rail before they could secure their needed consignment, so great was the demand for grain.⁴³ While the Byler and Walker stores carried small stocks of dry goods and groceries, Fox and Bushnell were generally prepared to do a wholesale as well as a retail business. This store opened early in the morning and did not close until late at night. About its large heating stove during the winter congregated ranchmen and their families. Cowboys who had ridden to town from faraway ranches, were to be found on the street at almost any time of the day or night. Numerous saloons, which had almost instantly sprung up, were centers of warmth and good cheer. In these saloons poker, monte, and other games of chance were indulged in. The usual scenes incidental to frontier life were not absent. One favorite pastime of the cowboys was to ride up and down the main street, shooting off their guns to the accompaniment of wild yells.⁴⁴ Little damage was done, however, in these sportive exhibitions.

The first two newspapers published in what is now Union County were the *Folsom Idea* and the *Clayton Enterprise*. It is not known which of these journalistic enterprises was launched first, although it is likely that they came into existence about the same time.⁴⁵ The *Folsom Idea* was a

40. Morris Herzstein, *Interview*, April 6, 1928.

41. George Hubbard, *Interview*, November 4, 1931.

42. Tom Bushnell, *Interview*, September 14, 1933.

43. Colonel Jack Potter, *Interview*, May 28, 1934.

44. D. W. Burke, *Interview*, December 27, 1928.

45. Morris Johnson, *Interview*, October 4, 1929.

small sheet of six columns. It was gotten out on an antiquated Washington hand press. Its editor was J. W. Curren, who, with his family, settled in Folsom shortly after the town was established.⁴⁶ The business of the *Idea* and the *Enterprise* was small. The town companies purchased space weekly in both of these publications for a time, and local merchants advertised their wares in them. After the opening of the land office in Folsom, legal notices as to final proof of pre-emption and homestead claims contributed to the support of these newspapers, the existence of which was precarious and not always one of profit. The *Clayton Enterprise* was first published in a one-story frame building on Broadway street.⁴⁷ The second newspaper to be published in Clayton was a four-page sheet, ten by fourteen inches in size, called the *Maverick*.⁴⁸

Between 1893 and 1900 several other newspapers sprang into existence in Clayton. The *El Fenix*, published partly in English and partly in Spanish, was owned and edited by Faustin Gallegos, who was district court interpreter during the term of Judge Mills. A Republican campaign sheet, *Union del Pueblo*, had an adventurous and short career; it was printed in the Spanish language and was supported by the Republican Central Committee of Union County.⁴⁹ In 1908 the *Clayton News* was established, a successor to the *Enterprise*.⁵⁰ Clayton now has two weekly newspapers, the *Clayton News* and the *Union County Leader*.

The towns of Folsom and Des Moines were laid out soon after the building of the Colorado and Southern railroad. Their development has been much like that of Clayton. The population of Clayton increased from 750 in 1900 to 2,518 in 1930.⁵¹ Des Moines, the only other incorporated town, had a population of 362 in 1930.⁵² At that time Grenville had only 231 inhabitants. Folsom, the second largest town

46. *Ibid.*

47. J. E. Stanley, *Interview*, March 27, 1934.

48. *Ibid.*

49. Dan Taylor, *Interview*, March 28, 1934.

50. *Clayton News*, November 8, 1908, p. 1.

51. United States, *Census*, 1930, Vol. I, p. 733 (Population).

52. *Idem.*

in the county, had a population of 761 in 1930.⁵³ There are a few other small towns, or villages, in Union County.

In 1907 the Atchison, Topeka and Santa Fe Railway Company built a branch road from Raton to Des Moines.⁵⁴ In 1931 the same company built a line from Felt, Oklahoma, across Union county to Farley, New Mexico. This gives the county a total of about one hundred fifty-six miles of railroad.⁵⁵

Before any railroad was built in Union county, there were three trails that crossed the county. One of these had been the old Santa Fe trail; another was a wagon trail from Springer, New Mexico, to Tascosa, Texas. There was also a trail from the lower part of the county to Trinidad, Colorado.⁵⁶ Today (1934) the county has about seventy miles of oiled highway and more than three hundred miles of graded and maintained dirt roads.

Farming within the last twenty years has become rather important. Union county has 180,000 acres under cultivation.⁵⁷ The principal crops are corn, beans, grain sorghums, broom corn, and the small grains such as wheat, oats, rye, and alfalfa. There are about six thousand acres under irrigation.⁵⁸

53. *Idem.*

54. *Clayton Citizen*, April 4, 1907, p. 2.

55. Helen Haines, *History of New Mexico*, pp. 258-259. New York: New Mexico Historical Publishing Company, 1891.

56. Colonel Jack Potter, *Interview*, January 14, 1934.

57. United States, *Census*, 1930, Vol. III, Part 3, p. 312 (Agriculture).

58. *Ibid.*, Vol. III, Part 3, p. 320.

RECONSIDERATION OF THE DEATH OF JOSIAH GREGG

By HOWARD T. DIMICK

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I

Josiah Gregg was born in Overton County, Tennessee, on July 19, 1806. His father Harmon [Harman] Gregg, a Western pioneer, married a woman of Pennsylvania, Susannah Schmel[t]zer.¹ Harmon Gregg was a son of Jacob Gregg and Polly Hatcher, and Jacob Gregg was descended from William Gregg I of Delaware who emigrated from Londonderry, Ireland, in the period 1680-1682 and landed at

1. *Pennsylvania Archives*, 3 Ser., 18 century (29 vols. and index, Harrisburg, 1894-1899), XV, XVI, XVII, XXI XXIII, XXIV, XXVI, *passim*. Members of the Schmelztzer family may be found mentioned in the records *supra*.

New Castle with his sons John, George, and Richard and a daughter Ann.²

William Gregg I, although he had lived long in Ireland before his settlement in the American colonies, was not of Scots-Irish lineage but was of clannish and pure Scottish blood, having descended from Clan Gregor (Mac Gregor) of the Scottish Highlands.³ There is reason to infer that he was born William Mac Gregor and that his family name was changed to Gregg after Clan Mac Gregor was abolished by parliament under Charles I in 1633.⁴ The edict against the Clan licensed anyone to kill a Mac Gregor on sight and to receive a reward for the deed.⁵ Members of the clan who had preserved their highland integrity despite the persecution of James I and VI, took such names as Gregg (Greig), Gregor, Gregory, Grigor, Gregorson, Grier, Grierson, and others, and some of the Mac Gregors emigrated to Ireland.⁶

William Gregg I was the genarch in America of a line of dynamic and gifted Greggs, several of whom gained distinction.⁷ Two of them were exceptional: William Gregg of South Carolina who introduced cotton mills in the Graniteville district, and General John Gregg of Alabama and Texas

2. *Dictionary of American Biography* (20 vols. and index, Charles Scribner's Sons, New York, 1928-1937), VII, 598, 599; *The Encyclopedia Americana* (29 vols. and index, Americana Corp., New York & Chicago, 1944), XIII, 442.

3. I have traced Gregg family mottoes preserved by descendants of William Gregg I of Delaware directly to Clan Gregor (Mac Gregor) of Scotland. This discovery, made with the aid of The Library of Congress, takes these Greggs back to Gregor Alpin, third son of Alpin, who founded Clan Gregor. See Eyre-Todd's *Highland Clans of Scotland*.

The eldest son of Alpin, king of Scots, became Mac Alpin, and Mac Alpin is an alternate patronymic of Mac Gregor.

Some biographers have inferred that because William Gregg I lived in Ireland he belonged to the Scots-Irish families of Ulster; but this assumption is without foundation, and although some of these Greggs married Irish nationals they were highlanders by blood and custom.

4. Frank Adam, *The Clans, Septs, and Regiments of the Scottish Highlands* (W. & A. K. Johnston, Edinburgh & London, 1924), 78-79; A. W. Dellquest, *These Names of Ours; A Book of Surnames* (Thomas Y. Crowell Co., New York, 1938), 209-210; George Eyre-Todd, *The Highland Clans of Scotland* (2 vols., D. Appleton & Co., New York, 1923), I, 166-172.

5. George Eyre-Todd, *op. cit.*, I, 166-172.

6. *Ibid.*, I, 172.

7. Howard T. Dimick, "Visits of Josiah Gregg to Louisiana, 1841-1847" in *The Louisiana Historical Quarterly*, XXIX, No. 1 (January, 1946), 3.

The writer's family is descended from four Gregg brothers of Virginia: Nathan, James, William, and Samuel Gregg, descendants of William Gregg I. General John Gregg was also descended from this Virginia family.

whose death near Richmond, Virginia, on October 7, 1864, was regarded as a calamity by the officers and men of the Confederate arms, many of whom wept while escorting the body to the cemetery.⁸ Josiah Gregg's fame, in his own field, is no less soundly established.⁹

II

Josiah Gregg lived in the vicinity of Fort Cooper, Missouri, until he was nineteen years old when his parents moved to Jackson County near the present site of Independence.¹⁰ As a lad Josiah Gregg wanted to study medicine but could not arrange such a study in his backwoods environment. When his health became affected at the age of twenty-four, he joined a Santa Fe caravan on the advice of his physician, and in the years from 1830 to 1840 he made a number of trips to and from Santa Fe, residing for much of the time in Santa Fe where he was engaged in the mercantile business.¹¹ His last journey to Santa Fe was made in the spring of 1839,¹² and early in 1840 he set out for Van Buren, Arkansas, where his favorite older brother John Gregg was a partner in the firm of Pickett & Gregg.¹³ He made business connections in the United States, quit the Santa Fe trade, and in 1844 went to New York where he found a pub-

8. Charles W. Field, "Campaign of 1864 and 1865" in *Southern Historical Society Papers*, XIV, 558; E. L. Sykes, "Burial of General John Gregg in Mississippi" in *Confederate Veteran*, XXII, No. 10 (October, 1914), 463-464.

9. Josiah Gregg, self-educated except for his medical studies, impressed the leading scientists of his day. Ferdinand Roemer in his *Texas*, 32 (footnote), refers to him as "the eminent Gregg, author of 'The Commerce of the Prairies'."

Gregg's book, which sold several editions, was translated into German, and was one of the leading works on commerce of its day, and is now one of the important items of Americana.

10. *Diary & Letters of Josiah Gregg, 1840-1847*, ed., M. G. Fulton (University of Oklahoma Press, Norman, 1941), 10. Cited hereinafter as *Diary & Letters*, I.

11. *Ibid.*, I, 43; Howard T. Dimick, "Visits of Josiah Gregg to Louisiana, 1841-1847," *loc. cit.*, XXIX, 4.

12. John and Josiah Gregg to Commanding Officer of Dragoons Escorting the Santa Fe Caravan, May 12, 1839. By courtesy of the *Division of Manuscripts*, The Library of Congress. On May 12, 1839, Josiah Gregg, who was en route to Santa Fe in company of his brother John Gregg, had reached Camp Holmes near Coop Timbers on the Santa Fe trace. The food was running low and the Greggs were looking for buffaloes.

See *Notes and Documents* this issue of the Review for this letter in full as copied from a photostat by Howard T. Dimick and submitted for publication. Editor.

13. Josiah Gregg, *Diary & Letters*, I, 43-69.

lisher for his celebrated work *Commerce of the Prairies; or, The Journal of a Santa Fé Trader . . .* Having launched his venture as an author, he went to Louisville, Kentucky, and there attended the Medical Institute of Louisville from which he was graduated in March, 1846, with the degree of M.D.¹⁴

Doctor Gregg had intended to return to the Santa Fe trade after graduation, but was persuaded in June to act as guide and interpreter for a mounted regiment from Arkansas under command of Colonel Archibald Yell. The regiment marched for the Mexican border, and at San Antonio was attached to the division of Brigadier-General John E. Wool which was known as the "Army of Chihuahua."¹⁵ Gregg served with the American forces in the Mexican War until June, 1847, when he paid a visit to the United States.¹⁶

Having completed his business at New York and Philadelphia, he made a leisurely return to Louisiana where he remained at the plantation home of his brother John near Shreveport until November.¹⁷ At New Orleans he embarked on the government steamer *Ashland*, reaching Brazo de Santiago, Mexico, in December.¹⁸

Making his way to Saltillo, which he had visited while in the military service, he settled down to the practise of medicine which he continued as a physician of growing repute until the following December.¹⁹ Ever since returning to Mexico he had planned to visit California, and news of gold mining north of San Francisco hastened his decision to begin the journey. Leaving Mexico City in April, 1849, he

14. *Ibid.*, I, 123-156, 159-192.

15. *Ibid.*, I, 251-299; *Dictionary of American Biography*, VII, 598.

16. *Diary & Letters of Josiah Gregg, 1847-1850* (University of Oklahoma Press, Norman, 1944), 33-182. Cited hereinafter as *Diary & Letters, II*. Gregg's sojourn in the United States was brief and would have been terminated sooner had it not been for a virulent epidemic of yellow fever in New Orleans which caused him to turn back up Red River for a visit to his brother's plantation home in Caddo Parish, Louisiana.

17. *Ibid.*, II, 168-182; *public records of Caddo Parish, Louisiana*. John Gregg in 1847 owned a small plantation and 14 negro slaves. He appears to have been engaged in raising stock as well as cotton.

18. Josiah Gregg, *Diary & Letters, II*, 181-193.

19. *Ibid.*, II, 202-237.

traveled to Mazatlan where in July he took a steamer bound for San Francisco, landing there about September 1.²⁰

Soon after arrival in California, he went to the Trinity River mining settlements in the vicinity of Big Bar.²¹ From the settlements in November he led a party of explorers toward the mouth of the Trinity River to ascertain the reality of a bay described by Indians as receiving the waters of the Trinity. The party consisted of Gregg (captain), Thomas Seabring, David A. Buck, J. B. Truesdell, — Van Duzen, Charles C. Southard, Isaac Wilson, and Lewis K. Wood.²²

The adventurers discovered the bay [Humboldt Bay] on December 20, but could not agree among themselves on the best route to be followed on the return trip to civilization.²³ Since neither faction would yield, the party divided into two groups each of which selected a different route for the return trip. Gregg with Van Duzen, Southard, and Truesdell followed the Pacific coast for a short distance southwardly and then turned inland to reach the Sacramento Valley. Wood, Seabring, Buck, and Wilson proceeded up Van Duzen's Fork and near its head turned southwardly toward Sonoma Valley and San Francisco.²⁴ So far as known the two factions did not meet on the return trip.

Gregg's party encountered severe exposure and hardship and made slow progress. The death of Gregg occurred on February 25, 1850, while he was riding with his companions near Clear Lake (now in Lake County, California). He suddenly fell from his horse and died in a few hours without speaking. He was buried in a grave dug with sticks and covered with stones to prevent the depredations of wild

20. Josiah Gregg to Dr. George Englemann, February 1, 1849; Gregg to Dr. George Bayless, June 30, 1849; *Diary & Letters, II*, 285-287, 335, 340, 346.

21. Maurice G. Fulton, who edited Gregg's *Diary & Letters*, gives Big Bar as the probable vicinity of the settlement on Trinity River to which Gregg went after leaving San Francisco. The writer has no additional data on this locality. See *Diary & Letters, II*, 361 (footnote).

22. Wood's account of the journey to Humboldt Bay gives the names of the eight persons of the party of explorers, but does not give the first name of Van Duzen.

23. Wood's account of the discovery of Humboldt Bay; Owen C. Coy, "The Last Expedition of Josiah Gregg" in *The Southwestern Historical Quarterly*, XX, 41-49, The Spaniards called the bay *Trinidad*—the name given it by Bodega in 1775.

24. Wood's account. See *Diary & Letters, II*, 361-379.

animals. But the location of his grave was an unmarked one in the wilderness, and, so far as known, was never afterwards found.²⁵

III

The news of the death of Josiah Gregg reached his brother John in Louisiana in May, 1850, in a letter from Probst, Smith & Company of San Francisco, but the letter contained no details of the death. In fact, the historiographer is impressed by the scantness and inadequacy of the data on Gregg's death, as well as by the reticence of the members of the faction which accompanied Gregg on the return trip.²⁶

John Gregg promptly conveyed the news of his brother's death to Philip A. Hardwick, his brother-in-law, who was about to go to California on a business trip. For months thereafter John Gregg made an effort to ascertain details of the death and to locate Josiah's notebooks, papers, and personal effects. He wrote to several persons and firms in California, requesting information, but in January, 1851, he wrote to Mrs. Philip A. Hardwick (Margaret Gregg) that he had been unable to learn anything about the death or to locate his brother's notebooks and personal effects. Philip A. Hardwick had gone to California in May, 1850, but in September of that year he had heard nothing from Josiah Gregg and had no confirmation of his death.²⁷

The newspaper reports of 1850, announcing the discovery of Trinidad [Humboldt] Bay, contained occasional references to the death of Captain Gregg, but the accounts are of no value in attempting to ascertain the cause of Gregg's death or to learn the significant circumstances which preceded it. In a general way they attribute death to exposure and exhaustion, asserting that Gregg's "physical powers sunk" under the hardships of the expedition, and they mention his "debilitated" condition. As a matter of

25. Dimick, "Visits of Josiah Gregg to Louisiana," *loc. cit.*, XXIX, 5; *Diary & Letters, II*, 379.

26. John Gregg to Philip A. Hardwick, May 13, 1850, *Diary & Letters, II*, 354.

27. Gregg to Hardwick, May 13, 1850; John Gregg to Dr. George Englemann, December 24, 1850; John Gregg to Mrs. Philip A. Hardwick, January 6, 1851; Philip A. Hardwick to Mrs. Hardwick, September 21, 1850; *Ibid.*, II, 356-360.

fact, Josiah Gregg had suffered from delicate health as a young man, and there is no doubt that he was ill at the time of undertaking the expedition to the bay. It is probable that his associates were impressed by the fact of illness during the exploration; but of details there are none in the newspaper reports. Yet it must not be overlooked that Gregg was a hardened explorer and traveler used to living on scant food when that was necessary, and in no danger of "sinking" after a few days of hunger. The newspapers of California which first carried the story of the discovery of the bay and the death of Gregg were probably influenced in their accounts of the death by statements of Charles C. Southard, a member of Gregg's faction, who appears to have established the opinion that Gregg died of *starvation*.²⁸

In 1856 Lewis K. Wood published his account of the discovery of Humboldt Bay, a circumstantial narrative of the expedition from the Trinity River mining settlements to the locality where the party divided into two factions and went separate ways. Wood's account attributes the death of Gregg to starvation. Wood's account, however, is admittedly based on what Wood was told about Gregg's death by Charles C. Southard, since Wood was not a member of Gregg's faction on the return trip and was not present when Gregg collapsed. It is probable, therefore, that Southard impressed on Wood his own opinion that Gregg died of starvation. According to Southard, Gregg's faction had been without "meat" for a few days, and had lived meanwhile on herbs, nuts, and acorns.²⁹

In 1915 Owen C. Coy, engaged in research work in California, came across records of the expedition to the bay, including Wood's account of the death of Gregg. Coy published an article on Josiah Gregg's last expedition, but quoted Wood's narrative on the point of Gregg's death and, unfortunately, made it appear that the person quoted was present when Gregg died.³⁰

28. *Alta Californian*, March 7, 1850; *The Arkansas Gazette and Democrat*, May 17, 1850; *The Liberty (Mo.) Tribune*, May 31, 1850; *op. cit.*, 351-355. Coy gives the first article *supra* as appearing in *Alta California* (?).

29. Wood's account first appeared in *The Humboldt (Cal.) Times*, April 26, 1856; Owen C. Coy, "The Last Expedition of Josiah Gregg" in *loc. cit.*, XX, 41-49.

30. *Ibid.*, XX, 41-49.

In 1941 the first part of the *Diary & Letters of Josiah Gregg* was published in Oklahoma with the coöperation of Claude Hardwicke of Liberty, Missouri, who was custodian of Gregg's personal diaries and other records. The second part of these valuable records was published in 1944, and in the second volume there is an account of Gregg's death based on the newspaper reports and on Wood's narrative with Wood's familiar statement that Gregg died of starvation.³¹

IV

Because eyewitness narratives of the death of Gregg have not been available, some writers have accepted the account of Wood's, and others have attempted to make it appear that Wood was present when Gregg died. Wood's account has found its way into the publications of several historical societies.³² The most recent use of Wood's account to show that Gregg died of starvation is in an article by Percy Montgomery quoted in a popular California magazine. According to the editors, Montgomery died in San Francisco in July, 1946. In the article Montgomery worded Wood's account in such a way as to imply that Wood was present when Gregg fell from his horse and died in two hours from starvation.³³

So far as Wood's account of the death of Gregg attempts to assign the cause of death, it is merely hearsay and is based on the statements made to Wood by Charles C. Southard, an eyewitness of Gregg's death. But there is no record to show that Southard had any knowledge of medicine or of death beyond that of the average layman of his day; his opinion is on that account a lay opinion of death and, as such, carries no weight. Even Southard's observations of the incident and of the surrounding circumstances are scant and unsatisfactory; but on that point it is well to remember that the explorers of Gregg's faction were suffering from

31. The University of Oklahoma Press, Norman. The Press is the publishing division of the university.

32. Wood's account has been reproduced or quoted in the following publications: *Register of the Kentucky State Historical Society*, VI, 19-32; *The Southwestern Historical Quarterly* (The Texas State Historical Association), XX, 41-49; *Hillett's History of California*, III, 817-832.

33. *Sunset, The Pacific Monthly*, 96, No. 6 (June, 1946), 5.

hunger, exposure, and fatigue, and probably also from disappointment that the route chosen by them had not brought them to the Sacramento Valley by February 25. Their ability to observe closely, in truth, their very inclination to observe details, was affected by their weariness and frustration.³⁴

Wood, so far as known, had no knowledge of medicine or of death other than that of a layman, and his opinion of the cause of Gregg's death is a lay opinion and has no more weight than Southard's. Besides, Wood's account was first published about six years after Gregg's death, and there is the probability that faulty memory may have modified his reference to Gregg's collapse and death.³⁵

V

The want of competent observation of Gregg's death raises many questions pertinent to any historical investigation of death, especially where the cause is in doubt. One may ask with point whether or not Gregg had complained of headaches or other pains before his collapse. With as much point one may inquire into his irritability and uncharacteristic abuse of his companions on the exploration trip to the bay as recorded by Wood. Did all the members of his faction agree that he died of "starvation," or were they instructed on that point by Southard? Why did none of the survivors of Gregg's faction make a statement for publication about the death? Did Gregg make any effort to speak to a member of his faction before death, and what did he try to say? The account of Wood's states that he died in a few hours *without speaking*. Was Wood's statement founded on Southard's personal opinion, or did the other two members of Gregg's faction support it? These are indeed but a few of the questions with which the investigator is faced.

The questions are not without bearing in the light of medical opinion obtained by the writer. In unofficial med-

34. Dimick, *loc. cit.*, XXIX, 5 (footnote).

35. A lapse of six years between the time of Southard's statements to Wood and the publication of Wood's account might cause errors in Wood's recollection of Southard's statements.

ical discussion with physicians, the writer has elicited the opinion that Gregg's death, as based on the description given by Southard to Wood, is *not* consistent with a death from starvation.³⁶ Certain varieties of acorns, it was said, contain chemical compounds which tend to increase human blood pressure.³⁷ If the eater of acorns has hardening of the arteries, increased blood pressure is dangerous, and may lead to a cerebral hemorrhage (stroke).³⁸

The account of Gregg's collapse and death as recorded by Wood is suggestive of a stroke (cerebral hemorrhage), but the details are so scant that it is impossible to assign this as a tentative cause of death. It seems fairly certain, however, that a sudden organic attack, such as a stroke, a heart attack, or other organic seizure, caused Gregg to collapse. The attack may have been superinduced by exposure and exhaustion. Since there was no medical aid at hand and no means of reviving Gregg, he died in a few hours. But there is no foundation for the assertion that he died of starvation.³⁹

VI

The conclusion is unavoidable that the death of Josiah Gregg remains a historical problem, and will probably so remain.

Wood's account can not be accepted as having historical weight. Wood as a layman was not competent to give a medical opinion or to determine a cause of death; and Wood's data were based on hearsay.

Southard, who related the incident of Gregg's death to Wood, was also a layman, and had no competency to give a medical opinion or to determine a cause of death. His opinion has no more weight than Wood's.

36. This is the unofficial medical opinion of Dr. George B. Dickson, physician, surgeon, and associate of the North Louisiana Sanitarium, Shreveport, Louisiana. Gregg's abusive language to his companions is mentioned by Wood. See *Diary & Letters, II*, 373.

37. *Idem.* It is not known what varieties of acorns were eaten by Gregg.

38. The references to Gregg as the "old gentleman" and the "old man" in Wood's narrative indicate that he was prematurely old at forty-three years. In Josiah Gregg's branch of the Gregg family there have been cases of arterial disease and senility.

39. According to unofficial medical opinion, Gregg's death does not resemble a clinical picture of death from starvation.

The details and circumstances of the death as known are not consistent with modern medical knowledge of death from starvation.⁴⁰

The probability of death from a cerebral hemorrhage finds some support in the premature old age of Gregg at forty-three years as well as in the known susceptibility of these Greggs to arterial disease and senility.⁴¹

But a possibility remains which can not be ignored: the possibility that the death of Josiah Gregg was in fact homicidal.

Wood in his account relates an incident in which Gregg narrowly escaped injury or even death at the hands of angry members of the exploration party whom he had abused with "insulting" language.⁴² It is not beyond possibility that such an incident would rankle in the minds of some of those who were Gregg's targets—perhaps in the mind of one of the members of his own faction on the return trip. Fierce quarrels and prolonged enmities were fairly common among pioneers, and they were more likely to occur in situations where the tempers of men were tried by exposure, hunger, and fear. If Gregg's death were homicidal, it would explain the disappearance of his notebooks and personal effects, for they would probably have been buried with him as a precaution by the killer. So, too, would it explain that unlikely story of death by starvation. Since there were only three surviving members of Gregg's faction and since they remained reticent about the death, making no statements for publication except Southard's scant statements to Wood, the possibility of homicide must remain. The Gregg family

40. Report to the Editors of *The Saturday Evening Post*, "Don't Forget How They Starved Us," by Major Livingston P. Noell, Jr., Medical Corps, U. S. Army Air Forces; *Executive Document No. 23*, 2d Ses., 40 Congress, 1867-1868, Vol. 8, 376-377, 629-634.

Dr. Noell, Jr., calls attention again to the disabilities and diseases suffered by those who starve to death; in the Civil War these diseases were encountered at Camp Sumter, Andersonville, Georgia, and although they are differently described by the doctors of 1864, they are still recognizable today.

Doctor Noell, Jr., mentions these: beriberi, hypoproteinemia, scurvy, pellagra, ariboflavinosis, and blindness from Vitamin A deficiency.

41. Gregg's irritability and foul temper on the expedition to Humboldt Bay may have been indicative of high blood pressure from arterial deterioration.

42. *Diary & Letters*, II, 373. Wood's narrative may be consulted in any available publication mentioned in this paper.

could never ascertain details of the death nor recover Josiah Gregg's notebooks and other effects.

Certain it is that the account of Wood, so readily accepted in the past, can no longer be relied upon by historians to explain the cause of the death of Gregg.

BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER VII

TRAGEDY STALKS THE BENCH

Having ignored Kirby Benedict's request for reappointment, President Andrew Johnson designated a Civil War hero as the next chief justice of New Mexico. This military jurist was none other than Brigadier General John P. Slough who as colonel in the Colorado Volunteers had turned back the advancing forces of the Confederacy in the Battle of Apache Canyon north of Santa Fe in 1862. Matthias Slough, his ancestor, was the first colonel named by General George Washington after the latter had been chosen commander-in-chief of the Colonial forces. Judge Slough's father was General John P. Slough of Ohio.

John P. Slough, Jr., came west to Denver from Ohio in 1856 to practice law. When the Civil War broke out he raised the First Colorado Volunteers, under direction of Governor William Gilpin of Colorado, and received a commission as its colonel.¹ His force, augmented to some 1,312 men by the addition of Lewis' battalion of the fifth regular infantry, Ritter's battery of four guns, Claflin's battery of four small howitzers, Ford's company of the Second Colorado Volunteers and, later, the Fourth New Mexico Volunteers, moved southward into northern New Mexico.

On March 28, 1862, Colonel Slough's command reached the neighborhood of Glorieta and Apache Canyon where contact was made with a detachment of Brigadier General H. H. Sibley's advancing Texas Confederate troops. At first the southerners under command of Colonel W. R. Scurry drove Slough's men back a couple of miles. But Slough had meanwhile sent a force of about four hundred men under Major J. M. Chivington, guided by Colonel

1. William Clarke Whitford, *Colorado volunteers in the Civil War* (Denver, State Historical and Natural History Society, 1906), p. 47.

Manuel A. Chavez and James L. Collins of Santa Fe, to reconnoiter the strength and nature of the Confederate forces. After a march of sixteen miles these men came to a place overlooking the canyon and from there they located a wagon-train corralled closely to a small stream in the canyon. The entire train, which included the major supply of the Confederates' ammunition and supplies together with all the animals and sixty-four wagons, was destroyed. This action deprived the Texans of essential war equipment and their food supply. Scurry's forces were soon forced to withdraw in the skirmish which followed and make a hasty retreat to Santa Fe, which was abandoned shortly thereafter; they continued the retreat down the valley of the Rio Grande.

Though Slough proved to be an able military commander, his men did not fully trust him, largely, it seems, because of a certain coolness of demeanor which was misunderstood by them. Ovando J. Hollister, an intelligent and observant soldier in the First Colorado Volunteers, kept a diary while he was in the service. In this he relates an incident which illustrates this characteristic in Slough's nature:

We fell in and gave the Colonel three cheers and a tiger. He raised his cap, but did not speak. How little some men understand human nature. He had been our Colonel for six months, but never become known to us, and on the eve of an important expedition, after a long absence, could not see that a few words were indispensable to a good understanding. He has a noble appearance, but the men seem to lack confidence in him. Why, I cannot tell—nor can they, I think. His aristocratic style savors more of eastern society than of the free-and-easy border, to which he should have been acclimated, but that is bred in the bone.²

The distrust apparently went so far, unjustified of course, as to lead to actual suspicion of his loyalty to the Union cause, partly due to his former political affiliations. One of his captains years afterward admitted that he had watched the Colonel closely during the Battle of Pidgeon's Ranch at Apache Canyon and that if he had discovered any

2. *Ibid.*, p. 102.

movement or order by his commanding officer intended to be favorable to the enemy, he would have shot him on the spot.

After Colonel Edward R. S. Canby, Slough's immediate superior, learned of the Confederate defeat at Apache Canyon, he sent orders to Slough to return to and protect Fort Union, and much against the wishes of both the colonel and his troops, their army fell back to the fort, arriving there on April 2nd. Upon reaching this base, with Colonel Canby's orders successfully executed, Colonel Slough resigned his commission because of his disgust at not having been permitted to pursue the Confederates down the Valley.³

Soon afterward, however, the success of the colonel's expedition reached the ears of President Lincoln. Slough was called to Washington by the president, and was named military governor at Alexandria, Virginia. Here he had command of the reserve forces detailed for the protection of the national capital. On August 25, 1862, he was commissioned a brigadier general. He left the service with an honorable discharge three years later, August 24, 1865. Shortly before he left the military service he served as one of the pallbearers at the funeral of President Lincoln.

General Slough was appointed chief justice of the New Mexico Supreme Court in March, 1866. At the July session of the first judicial district court in 1867, Judge Slough entered one of his most important judgments in a case involving the political status of the Pueblo Indians. In this he declared these First Americans to be citizens of the United States. The decision was later sustained on appeal to the Supreme Court in the case of *United States v. Lucero*, 1 N. M. 422, in an opinion written by Judge Slough's successor, Chief Justice John S. Watts.

General Slough made a good trial judge, and one who was not afraid of hard work. During the July, 1867, term he disposed of an amazing number of cases while sitting as judge of the Territorial district court and the *New Mexican* reported that on the United States district court docket alone there were about 250 cases, nearly half of them being

3. *Ibid.*, p. 127.

indictments covering violations of the revenue law. "Great credit is due to the Hon. John P. Slough," observed the same writer, "for the manner in which he dispatches business and for the fairness and impartiality of his decisions."⁴

Judge Slough held a great advantage over many of his predecessors in knowing how to work with the military authorities and instead of holding their enmity he had their full support. Not only had the removal of Brigadier General Carleton cleared the way for better relations between military and civil authorities, but even more the judge's personal prestige as a military commander secured for him the finest coöperation from the military personnel. An example of this collaboration is exemplified in an important conviction for selling liquor to Indians which resulted in a sentence of one year imprisonment. In this case the military authorities had arrested the offender, had promptly turned him over for trial to the civil officials, and later had aided in providing evidence during the course of the trial.

During his tenure as chief justice, General Slough was member of a committee in charge of dedication ceremonies at laying the cornerstone of the Civil War monument in the Santa Fe plaza. The governor of Colorado, the soldiers of the Colorado regiments, and the people of the Territory of Colorado generally were invited to participate. The judge likewise served on a citizens' committee to coöperate with the Union Pacific Railway toward extending the railroad from its line of the Smoky Hill River in Kansas through New Mexico to San Francisco. To Chief Justice Slough also should go the credit for discovering the capabilities of Samuel Ellison, historian and territorial librarian. Judge Slough appointed him as United States commissioner in 1867, the first such officer to be appointed charged with the difficult task of enforcing the peon act of March 2, 1867, abolishing and forever prohibiting the voluntary and involuntary servitude or labor of persons as peons in the liquidation of their debts or other obligations.⁵ Ellison later

4. *New Mexican*, Aug. 10, 1867.

5. J. Manuel Espinosa, "Memoir of a Kentuckian in New Mexico," *NEW MEXICO HISTORICAL REVIEW*, vol. 13, p. 5.

served in various capacities for the Territorial legislature and as librarian from 1881 to 1889.

Late in the 1850's a hard-headed Kentuckian named William Logan Rynerson walked to California along the Oregon Trail, prospected for gold in the Golden State and read some law. He enlisted in the California Volunteers at the outbreak of the Civil War and served until he was mustered out as captain in 1866. Then he moved to Mesilla in Doña Ana county, New Mexico, and promptly became involved in that county's turbulent and bitterly partisan political controversies as a member of the Republican party. He was admitted to the bar and practiced in the county until his death in 1893.

In December, 1867, Chief Justice Slough thoughtlessly made some bitter and slurring statements concerning Captain Rynerson, who was then serving as a member of the Territorial legislature, which reflected upon Rynerson's services as an officer in the army. Rynerson quickly heard all about these remarks and hastened to La Fonda (the old Territorial hostelry by that name) where Judge Slough was accustomed to spend his spare time. This was late in the evening on December 15, 1867. Rynerson encountered the chief justice in the billiard room of the hotel and demanded a retraction. Instead of giving any signs of immediate satisfaction, the judge reached for his derringer upon seeing the enraged lawmaker from Doña Ana county. Rynerson, observing this move, drew his firearm and shot, killing the judge instantly.

The tragedy caused a great deal of feeling in Santa Fe. Rynerson was tried for murder, but he was acquitted on the ground of having acted in self-defense.

The judge's widow sought for two years to recover on a \$5,000 life insurance policy. Payment was refused because of the circumstances surrounding the judge's death, but early in 1870 the company was compelled to pay the full amount as the result of legal action.

CHAPTER VIII

THE OUTLAW DUSTERS

The unexpected death of Judge Slough gave President Johnson responsibility for making a second appointment to the chief justice's post in New Mexico in a little over one year. He named John S. Watts, a man well acquainted with New Mexico and its problems, who had already served the Territory as an associate justice on the Supreme Court from 1851 to 1855, and as Territorial delegate to Congress from 1861 to 1863.

From the very start of his career on the bench Judge Watts displayed a stern disposition toward bringing to justice alleged criminals whom he knew or felt were violators of the law. His determination in this respect was carried so far that it later brought him into serious disagreement with his contemporaries on the bench.

On one occasion, while serving as chief justice early in 1869, Judge Watts indignantly dismissed a jury and ordered its members never to serve in his court again, because in spite of his instructions they had brought in a verdict of innocent in the face of all the evidence pointing toward infraction of the revenue laws by the accused.

In 1852, Judge Watts wrote a far-reaching opinion in a case which tested the jurisdiction of the Territorial Supreme Court.¹ The question presented was whether authority had been conferred on the court to issue writs of mandamus to probate courts. Judge Watts pointed out that the Supreme Court of the Territory owed its existence to the Organic law of Congress approved September 9, 1850, and that it was necessary to turn to that act to determine the extent of the court's jurisdiction. He then reviewed the enactments of the legislative assembly and came to the conclusion that the powers of the Supreme Court to issue these writs was limited to cases where it became necessary to do so in aid of its appellate jurisdiction, and that it was the district courts which held jurisdiction over judgments of the probate courts under the sections of the Kearny Code relating to revenue.

1. *Territory v. Ortiz*, 1 N. M. 5.

Judge Watts' opinion in this case is also of interest in that it enunciates a policy for non-interference by the Supreme Court in the manner in which the business of the district courts was being conducted by the trial judges. Quoting Judge Watts:

The jurisdiction and power of the district judge . . . is a point upon which we intimate no opinion; each district court must settle for itself its jurisdiction and power, subject to the review of this court as a supreme appellate tribunal.²

Despite Judge Watts' pronouncement in the Ortiz case, the judge later took serious exception to the judicial actions of Judge Brochus who had succeeded him on the supreme court bench under appointment from President Franklin Pierce. Judge Watts returned to Santa Fe when he left the court and resumed the practice of law.

In 1861 Watts was elected delegate to the thirty-seventh Congress over Don Diego Archuleta. His two years in Washington were marked with great industry in behalf of the people of New Mexico, and he was fortunate in enjoying the full confidence of President Abraham Lincoln.

When Congress was about to pass a special Union war tax, Watts secured exemption from the tax for New Mexico by agreeing to pass up the Congressional appropriation for completing the Territorial capitol and penitentiary. Through his influence with the administration Watts also secured appointment of Dr. Henry Connelly as governor of New Mexico, succeeding Governor Abraham Rencher in the summer of 1861, and of Miguel A. Otero I, his predecessor in Congress, as secretary of the territory, replacing Alexander Jackson, who had joined the Confederate army. Since Otero was a Democrat his appointment by the president upon Watts' recommendation indicates the utmost confidence which President Lincoln had in the delegate from New Mexico. However, because of his southern inclinations, Otero was not confirmed by the Senate and he served only from April until September, 1861.

Judge Watts himself was a strong Unionist and upon outbreak of war he immediately took an active part in

2. *Ibid.*, at pp. 16-17.

equipping troops for the Union army. There were a few merchants in Santa Fe who were known southern sympathizers, but aware of the strong Union sympathies of both Judges Watts and Benedict, whose power and influence were thoroughly respected, they suppressed any outward signs of their alliance with the Confederate cause. Judge Watts' surprising tolerance of these men and of Otero, however, brought forth considerable criticism of the New Mexico delegate. As an illustration, S. B. Watrous, rancher from near the confluence of the Mora and Sapello Rivers, was severely critical of Watts' attitude. He wrote a letter to the Secretary of the Interior in January, 1863, in which he complained that,

The people feel confident, that the Watts policy of sustaining secess.[ionist] sympathizers in office, to save the Union, is played completely out, and Watts, its Advocate, is played out with it. He is politically dead, dead, dead, in this Territory.³

Whether Watrous' supposition was correct is not certain, but the fact that Judge Watts was not a candidate for re-election tends to indicate that he realized his political strength was waning. At the close of his term he again returned to Santa Fe and resumed practicing law.

Due to a change in the time for convening of Congress no territorial delegate had been elected in time to qualify for the 1867-68 session of Congress, so Governor Robert B. Mitchell, using considerable secrecy, prevailed upon Judge Watts to act as the delegate *ad interim*. In due course Judge Watts disappeared from the Territory, and while rumors grew concerning his designation by the governor, Judge Watts made his appearance in Washington. In lieu of the customary credentials certifying to his election, Judge Watts presented the following letter from the governor to the House of Representatives:

Executive Office, Territory of New Mexico,
Santa Fe, N. M., March 13, 1867.

Sir: The Territory of New Mexico having no delegate in the Congress of the United States in consequence of the change of time for the meeting of Congress, and the Territorial Legislature having failed

3. Reeve, Frank D., "The Federal Indian Policy in New Mexico, 1858-1880," *NEW MEXICO HISTORICAL REVIEW*, vol. 13, p. 58.

to change the election laws of the Territory, so as to enable the people to elect a Delegate before the first Monday in September next, leaving us entirely without representation in Congress:

In view of these facts, I, Robert B. Mitchell, Governor of the Territory of New Mexico, do appoint John S. Watts, Delegate or Agent of the Territory of New Mexico during the interregnum, and until a Delegate is elected by the people at their annual election in September next and qualified, and ask for him the pay and emoluments of said position. If, under the rules of the House of Representatives and the laws of the United States, he cannot receive pay for his services, I most respectfully ask that he may be admitted to the floor of the House of Representatives without pay as the agent of the Territory for the purpose of procuring such legislation as may be necessary for the interest and welfare of the Territory.

In testimony whereof I have hereunto set my hand and the great seal of the Territory this 13th day of March, A. D., 1867.

ROBERT B. MITCHELL,
Governor of New Mexico.⁴

After a brief debate upon the question of whether this communication should be referred to the Committee on Elections or tabled, the latter course was adopted, the sponsors of both views being agreed that Judge Watts could not be seated in any capacity on the ground that the governor had no such power of appointment.

Named the following year as chief justice of the New Mexico Supreme Court, Judge Watts took his oath of office on August 5, 1868. Judge Houghton administered the oath and Judge Benedict presented the commission.

In connection with the judge's policy of uprooting outlawry in the Territory, which quickly manifested itself upon his resumption of judicial duties, it is interesting to observe his opinion in the case of *Garcia v. Territory*, 1 N. M. 415. Judge Watts here held that "whipping" was not a cruel and unusual punishment for the crime of stealing mules. Said he:

All punishment is more or less cruel, and the kind of punishment to be inflicted upon criminals to induce reformation and repress and deter the thief from a repetition of his larcenies has generally been left to the sound discretion of the law-making power. In old communities where law and order prevail, and some security exists for property in the honesty of the people, the mild remedy of imprisonment for

4. *Congressional Globe*, 40th Cong., 1st Sess. (1867), p. 499.

theft is usually adopted, but in new countries without jails, with many opportunities for thieves to steal and escape with their plunder, and no secure jails in which to confine them when convicted, a pressing necessity for the adoption of the punishment of whipping for the offense of larceny exists.⁵

In another case settling a major question of his day, Judge Watts wrote a lengthy opinion analyzing the status of the Pueblo Indian in American law. He held in this case that these Indians of New Mexico were, at the time of the Treaty of Guadalupe Hidalgo, citizens of Mexico, and by virtue of the provisions of the treaty became citizens of the United States by their failure to elect to retain Mexican citizenship. For this reason, he concluded further, their property rights were guaranteed equally with those of other erstwhile Mexican citizens in this country.⁶

Judge Brocchus who succeeded Judge Watts after his original appointment as an associate justice was no ordinary man. As early as 1851 he had served as associate justice of the Supreme Court of Utah under appointment from President Fillmore. He made himself quite a reputation one day when he walked into the Temple of the Mormons, who at that time fairly well controlled the policies of local government throughout Utah Territory, and in the presence of Brigham Young verbally mauled the Book of Mormon, its teachings and its practices, in language which ran like icicles down the Mormons' backs. When the judge had concluded his tirade, as Twitchell once described it,

the silence which greeted his retirement from the speakers' stand was melancholy in the extreme, and Brocchus was only awakened to a full sense of his situation when he heard the thunderous tones of the giant Brigham denouncing his temerity in pronouncing judgment upon God's chosen people within the very pale of the temple.

When Young concluded his forceful rebuttal to Judge Brocchus' remarks, even the judge conceded that there were some features of Mormonism which are "pleasing to the fancy and delightful to the flesh."⁷

5. *Garcia v. Territory*, 1 N. M. 415, at pp. 417-418.

6. *United States v. Lucero*, 1 N. M. 422.

7. R. E. Twitchell, "Address," in N. M. Bar Association, *Minutes*, 1895 (Santa Fe, 1895), p. 18.

Brocchus came to New Mexico as associate justice in 1854. He was very well liked within his own district which at that time had its headquarters in Taos, but Judge Watts' opposition brought about some unfortunate developments. To this, too, should be added the fact that during the judge's first term, Brocchus incurred the ill will of the attorney general, Theodore D. Wheaton.

Judge Brocchus was uncannily adept at using his fists. Once, while holding court in Taos, as he was crossing the plaza in elegant attire, his hands garbed in kid gloves, he met Attorney General Wheaton in company of Kit Carson. Brocchus stopped and with greatest cordiality shook hands with Colonel Carson. Wheaton offered to complete the ceremony by putting his hand out too. Brocchus, aware that Wheaton had been telling some tall tales about him throughout the Territory, looked Wheaton disdainfully in the eye and grumbled, "You impudent scoundrel, have you the audacity to offer me your hand?" Wheaton took a pass at Brocchus who deftly diverted the blow and in a matter of seconds "had Wheaton's head in chancery" and was pasting the general no end. Wheaton in telling about this incident in later years remarked, "They called him a parlor judge; he was nothing but a Baltimore plug-ugly."⁸

On another occasion Brocchus was standing on the J. L. Johnson corner in Santa Fe when John T. Russell, the editor of the *Santa Fe Gazette* who had been deriding the judge incessantly in his paper, heaved into view from a door within a few feet of him. Clad in immaculate attire, Judge Brocchus, engaged at the time in conversation with Attorney General Merrill Ashurst, took a gracious bow toward Ashurst, saying "Excuse me one moment, Judge," stepped over a few paces and gave Russell two terrific punches in the nose. As Russell's friends were carting the victim off in their arms, the Judge removed his gloves, tossed them into the street alongside the plaza, and remarked, "There, you've done dirty work enough." He then resumed his conversation with Judge Ashurst as though nothing had transpired.⁹

8. *Ibid.*, p. 20.

9. *Ibid.*, pp. 20-21.

Judge Brocchus was like Judge Watts with respect to his extreme intolerance of vice and crime. Yet, the elements of generosity and good heartedness were peculiarly predominant in his nature. These generous qualities commingled with his unyielding sense of right and justice sometimes led to almost ludicrous results. On one occasion Judge Brocchus sternly and without a quiver in his voice sentenced a man to death who had been on trial and convicted of murder in Rio Arriba county. After the trial the judge broke down completely at the thought of having ordered this person to his doom. Later, the man was pardoned by the governor and Brocchus reproved the chief executive in the severest terms and charged him with obstructing the course of justice.

Judge Watts and Wheaton were influential in obtaining passage by the legislative assembly of a joint resolution on December 31, 1855, seeking removal of Judge Brocchus through a memorial addressed to the president of the United States. Two years later, however, the legislature recanted its action and through a joint resolution approved December 29, 1857, "annulled, cancelled and repealed," its former resolution and expressed a desire "to do justice alike to the judicial history of New Mexico and to a faithful and upright public officer."¹⁰

Feeling grew into bitterness after Judge Watts was reappointed to the bench and served contemporaneously with Judge Brocchus.

William Breeden, prominent attorney who was serving at the time as assessor for the Territory of New Mexico, became involved in a series of criminal charges (inspired in part upon political grounds) growing from alleged professional misconduct on his part in drawing certain pension moneys for a client, Maria Rosa Herrera, and failing to account to her for them. In the spring of 1868 Breeden was first indicted for perjury on the charge of having taken a false oath to enable him to draw the pension money. Judge Watts served at the time as attorney for the prosecution in the case. Breeden, however, was acquitted of the charge. A short time after Judge Watts became chief justice, Breeden

10. Laws of the Territory of New Mexico, 1857-58 (Santa Fe, 1858), p. 88.

was indicted in the Territorial district court on a charge of having by false and fraudulent pretences *obtained* from the pension agent, Colonel James L. Collins, this same pension money, amounting to \$530.67. On this charge Breeden was brought to trial before Judge Brocchus at Albuquerque since Chief Justice Watts, before whom the case would normally have been tried as presiding judge of the first district, had been disqualified because of his connection with the prosecution in the former case. Breeden was again acquitted. Shortly thereafter he was indicted a third time at a term of the United States district court sitting at Santa Fe, the indictment this time charging him with having wrongfully *withheld* the same pension money from Maria Rosa Herrera. After taking another change of venue to Albuquerque, Breeden was again tried, this time before Judge Houghton, who was presiding for and during a temporary absence of Judge Brocchus. The trial resulted in conviction of Mr. Breeden. A motion was made for a new trial and after elaborate argument, which was held just after Judge Brocchus had returned and while both Judges Houghton and Brocchus were in attendance, the motion for the new trial was overruled by Judge Houghton. Shortly thereafter, however, Judge Brocchus took his place on the bench and granted the new trial which Judge Houghton had denied. The new trial was had and Breeden was acquitted.

Taking exception to Judge Brocchus' conduct in granting the new trial, Judge Watts on October 18, 1869, wrote a letter to the Secretary of the Interior in Washington, setting forth his displeasure in the premises. He wrote in part:

Mr. William Breeden after having been tried and convicted before Judge Houghton holding court in the place of Judge Brocchus and after having heard and overruled a motion for a new trial, Judge Brocchus took the bench and granted a new trial, thus reversing the decision of a brother judge without having heard the trial. The United States was then driven to trial in the absence of Col. James L. Collins, the Pension Agent, a principal witness, who after the first trial had been discharged and returned to Santa Fe, and a verdict of acquittal was procured. I consider this acquittal to have been procured by improper means. It seems that murderers, perjurers, and thieves have their own way in some of the localities in New Mexico. I con-

sider the granting of a new trial in this case an unprecedented outrage upon public justice. I listened to all the evidence, heard the arguments of the attorneys and the instructions of the court, and I, in all my life, never heard a plainer case of guilt made out, combined with forgery and perjury. If such things are to go unrebuked, and the perpetrators to hold high official positions in this Territory, good bye to an honest and pure administration of public justice here. I do not know that it will have any effect, but in justice to myself, I cannot let gross violations of law and justice be committed in my sight without speaking my mind plainly.

Yours respectfully,
JOHN S. WATTS,
Chief Justice¹¹

Colonel Collins, too, wrote a letter to the Secretary, supporting Judge Watts' views, in which among other things he said:

A few days before the sitting of the court at which Breeden was to be tried, Mr. [S. B.] Elkins received a letter from a gentleman in Washington City by the name of Lilly, who informed him that friends of Breeden had furnished Judge Brocchus seven hundred dollars to help defray his expenses in New Mexico to try Breeden. They furnished him three hundred dollars at first and subsequently sent him four hundred more to Baltimore. These and other facts developed by the said letter, show the motive which impelled Judge Brocchus in the extra-ordinary course he pursued in the trial of the cause.¹²

Judge Brocchus on December 24, 1868, replied in a lengthy letter to the United States Attorney General effectively refuting the charges. He then outlined his own views concerning proper judicial behavior, commenting in part:

If I am correctly advised as to the obligations and duties of Judges commissioned to preside over the courts of the country, it is no part of the duty of Mr. Chief Justice Watts to fulminate through the executive department his calumnious denunciations of my judicial acts; and, sir, I submit to you whom I know to be so well schooled in the proprieties and obligations of the profession which your learning so highly adorns, whether it is within the bounds of official propriety, or even common decency, for a judge to indulge in such disparaging innuendos towards a co-ordinate member of the bench, without the assignment of some specific act, or rational ground, on which to base his insinuations. If Mr. Chief Justice Watts is cognizant of the employment of any improper means to procure the acquittal of Mr.

11. *Daily New Mexican*, Feb. 6, 1869.

12. *Ibid.*

Breeden, it is his duty to point to the specific act and the evidence to prove it, and to aid in bringing the offender to condign punishment and merited dishonor, and he should be required by the public authorities to do so, or stand convicted and condemned as one who has dishonored himself by aiming through false and malevolent imputations to bring into disgrace a co-ordinate functionary, moving with himself, in the highest and most delicate sphere of public duty.¹³

Then, before concluding his letter, Judge Brocchus directed more darts at the Chief Justice in these words:

For months and months Mr. Chief Justice Watts hunted and hounded Mr. Breeden through the executive departments, at Washington, to get his office from him, and when the bench of New Mexico became honored with his presence, as its chief, he resumed the pursuit of his game, with undiminished thirst, in another field followed him into the precincts of justice; pursued it into the court house; sat with the attorneys for the prosecution; held close conference with them during the trial and betrayed his lust for blood by showing the most rampant zeal of counsel adverse to the accused.

Early in January, 1869, the territorial legislature took up the cudgels against Judge Watts in passing an act to re-assign the judges of the Territory.¹⁴ It provided for bringing Judge Brocchus to Santa Fe as presiding judge of the first judicial district, sending Judge Houghton to Albuquerque to handle the business of the second district, and removing Judge Watts to the remote, third district.

Governor Mitchell, who had not been in sympathy with the move, vetoed the measure as had been expected. After arguing the matter at length the executive presented these reasons for his action:

(1) The assignment of judges which was made by the first legislative assembly cannot be made again by any subsequent legislature without the consent of Congress.

(2) The appointment of a chief justice to fill a vacancy in that office gives a right to that officer to the first judicial district which has been respected for twenty years, and cannot be taken away by a body which has nothing to do with the appointment or pay of such officer.

(3) If such power of re-assignment should exist, to

13. *Daily New Mexican*, Feb. 15, 1869.

14. N. M. Legislature, *Diario de la Camara de representantes*, 1868-69, (Santa Fe, 1869), p. 221.

exercise it would be unjust, impolitic and unnecessary, and would not result in any good to the public.

(4) The attempt by the passage of this act, to disgrace and degrade the chief justice in order to flatter and encourage the ambition of one of his associates, would subject the legislature to the censure of every honest citizen and would result in a prompt and indignant disapproval of said act by the Congress of the United States, should the legislative assembly persist in its passage.

Indignant over the tone of this veto message and at the same time confident because of an earlier action of the Council in overriding a gubernatorial veto of his bill providing for a probate judge in Doña Ana County, William L. Ryner-son introduced a resolution in that body sharply rebuking the executive upon the tenor of his message. It read:

Resolved by the Council of the Legislative Assembly of the Territory of New Mexico:

That the communication of his Excellency the Governor, received yesterday, giving the reasons for disapproving an "Act assigning the Judges of the Supreme Court," is as discreditable to its author as it is distasteful to this body; that the assertion in said communication, accusing in effect, that the passage of the Bill referred to was for the purpose of humiliating or to degrade one of the Judges of the Supreme Court, and to gratify the ambition of another, is untrue, and the assumption in said communication that said law is contrary to, and unauthorized by the Organic law of this Territory, is a position that is not warranted or sustained by the law or the facts.¹⁵

This resolution, according to the *Daily New Mexican* of January 22, 1869, was passed in the Council by a large majority. The bill, however, did not pass that chamber over the governor's veto; it failed by a vote of nine to three.

Soon after adjournment of the legislature, President Grant was inaugurated and, making a clean sweep of appointive officials in the Territory, in April removed the entire judiciary, replacing not only Chief Justice Watts but also Judge Brochus who was succeeded by Hezekiah S. Johnson, editor and publisher of the *Albuquerque Review*, and Judge Houghton who was supplanted by Judge Abraham Bergen.

15. *Daily New Mexican*, Jan. 22, 1869.

Judge Watts was succeeded by able Joseph G. Palen of New York State.

After he had left the bench Judge Watts became defendant in an interesting case involving his liability as a surety on a bond made to the United States. Watts and others had gone in as sureties on the official bond of the judge's long-time friend, Colonel James L. Collins, who was serving as receiver of public moneys for government lands subject to sale at Santa Fe. Collins was murdered during a robbery while trying to defend the public funds. Watts and the other sureties were now called upon to make good the money with which the murderers absconded. Naturally they contended that the alleged defalcation was without fault on Collins' part, that loss of the money had come about as the result of an irresistible force, and that because of this they should not be held liable. Justice Warren Bristol, however, writing the opinion for the court, developed the intriguing theory that murder and robbery did not discharge the sureties. Said the court:

The application of this rule of law to receivers and depositaries of public funds may at first sight seem harsh and unjust. But when we reflect that any rule less rigid and arbitrary would afford the greatest temptation to pretend robberies and consequent defalcations, we can not but be convinced of its justness in principle, as well as of its necessity on grounds of public policy.¹⁶

Judge Watts continued his practice of law in Santa Fe until 1875. He then returned to Indiana, where he died in 1876.

CHAPTER IX

A LEGISLATURE RUNS A-MUCK

He had a discriminating judgment and memory so tenacious that he probably never read a decision or examined a question without retaining such a recollection of it as would enable him to call it up whenever occasion required.^{16a}

Such is the characterization of the Hon. Joseph G. Palen whom President Grant named to fill the post of chief justice

16. *United States v. Watts*, 1 N. M. 553, at p. 562.

16a. N. M. Bar Association, *Minutes*, 1890 (Santa Fe, 1890), p. 49.

of New Mexico in 1869, by one of the judge's contemporaries of the bar.

Judge Palen entered Yale as a freshman in 1835. After a year there he went to Amherst where he studied between two and three years, but did not graduate.

While at Amherst an incident occurred which early illustrated a fundamental characteristic in Palen's nature—never to forget his first impressions of a person with whom he came in contact. Henry Ward Beecher was a student at Amherst at the time and during the year Henry Clay made a trip through New England. The students of the college met to devise some suitable gift to be presented to Mr. Clay as a souvenir of his visit to Amherst. Young Beecher suggested that inasmuch as Mr. Clay's reputation for morality and virtue was well known, a Bible would make a fitting token of regard to be presented. Joe Palen detected a subtle slur in this suggestion and, arising to defend his idol, opposed Mr. Beecher very vigorously. Years later, in 1874, he recalled the incident when the great preacher was charged by a former associate, Theodore Tilton, with criminal intercourse with Mrs. Tilton. Judge Palen was strong in his convictions of Beecher's guilt.¹⁷ A committee of church members exonerated the preacher, but the trial in a \$100,000 damage suit brought by Tilton dragged on in the courts for six months and wound up with a hung jury.

After leaving Amherst, Palen went to Hudson, New York, where he commenced the study of law in the office of Ambrose L. Jordan, a noted attorney of that day. Palen was admitted to practice in 1838 and immediately formed a law partnership at Hudson with Allen Jordan. For ten years Palen practiced law here, until his health gave way as a result of "too close attention to business."

From 1854 until outbreak of the Civil War, Palen traveled over the northwest part of the country to which he took a liking, buying and speculating in real estate, endeavoring to regain his health. When Abraham Lincoln became president, Palen made application for a judicial vacancy in

17. N. M. Bar Association, *Minutes*, 1890 (Report of Committee on History of Bench and Bar in New Mexico), p. 48.

the northwest. He did not get it. When President Grant was inaugurated Palen renewed his application for a judgeship in the northwest. He received instead appointment as chief justice of New Mexico on April 15, 1869.

When Judge Palen arrived in New Mexico, early in July, court was in session with Judge Hezekiah Johnson presiding. Judge Palen sat beside him during the remainder of the term, but he did not qualify, preferring that Judge Johnson complete the docket.

Judge Palen was not pleased with the manner in which the courts were being conducted in the Territory. Possessed of great personal dignity, he exacted a proper respect for his high office from litigants and lawyers. His first impression at that time of members of the bar came near to causing him to pack his luggage and return to New York.

Illustrative of the judge's insistence upon proper court room decorum is the following episode, roastingly related by the *Daily New Mexican*, concerning one unfortunate member of the Santa Fe bar who incurred the court's displeasure because of some infraction of court room etiquette:

From Mora we learn that our distinguished townsman, Mr. Charles P. Clever, attorney at law, solicitor in chancery, proctor in admiralty, and sometimes bogus representative of our Territory in the United States Congress, was recently brought to grief at that place by Chief Justice Palen for playing some uncourtly pranks in open court which indicated rather erroneous notions on the part of the learned gentleman touching the proprieties of deportment that are demanded by all well regulated judicial tribunals. The Judge gave him some valuable instructions in regard to those proprieties, and for the purpose of impressing them upon his memory directed him to pay into the county treasury the moderate sum of fifty dollars which, as the offended court was inexorable, he reluctantly did. If that interesting little episode in the dull routine of business effects a material improvement in the manners of our good friend, no one will rejoice more earnestly than we, who have grieved without hope for a weary while over his lack of decorum.¹⁸

After disposing of seven sessions of court in the first judicial district, the first of which began at Santa Fe just before his arrival in July, 1869, Judge Palen hurried south to Mesilla. The third judicial district with a heavy docket

18. *Daily New Mexican*, Sept. 1, 1869.

was minus a judge as the prior incumbent, Judge Bergen, had left for the east, and to save the term of court Judge Palen went down to hold it. This move at once gained him much favorable publicity. Not only was each judge ordinarily too busy within his own district to sit elsewhere, but it was also considered questionable by some members of the bar whether a judge could legally preside in a district other than his own, in view of a provision in the Organic Act which required that members of the judiciary were to reside within their districts. This position was taken despite an act of the Territorial legislature expressly authorizing it.

Judge Palen established an enviable reputation, both in his own district and elsewhere, because of the reforms which he effected. He was praised also because of the certainty and efficiency with which he caused the law abiding citizens to be protected and the guilty punished. After he had been in the Territory for six months, the *New Mexican* commented editorially upon his accomplishments, as it did on frequent occasions thereafter, and said, among other things:

No judge who ever came to this Territory has, in so short a time succeeded in securing a deeper confidence among the people than Judge Palen has done. His strict views of justice, his urbanity and mildness, yet inflexible dignity on the bench, justifies us in saying that what we heard and read of Judge P[alen] before his arrival in New Mexico, were but just tributes to the gentleman who was selected as Chief Justice for New Mexico.¹⁹

The problem of conducting terms of court twice every year in each county in their respective districts proved onerous for the three judges assigned to New Mexico. This task was particularly difficult in the first district which was composed of seven counties. The other two districts included three counties each. Judge Palen held court in more than half the Territory, not considering his extra sittings in the judge-less third district. His first district calendar consumed six months, and this was in addition to attendance to his chores as chief justice and presiding at the Supreme Court term in January. Nevertheless, the judge prided

19. *Daily New Mexican*, Dec. 2, 1869.

himself in not skipping any of the sessions in any county. An unfortunate slip-up occurred in connection with the September, 1870, term as result of which court sessions were missed for Rio Arriba and Santa Ana counties, something which the judge always deplored. Having urgent reason to go East, Judge Palen made an arrangement with Judge Hezekiah S. Johnson to sit for him in these two counties. Through some misunderstanding in the negotiations, Judge Johnson did not conduct the sessions. The mix-up was distressing to Judge Johnson also, as he like Judge Palen, had established an enviable reputation for industry and judicial integrity.

Perhaps the most serious consequence resulting from skipping sessions of court was postponement of criminal trials from term to term. Indicted criminals out on bond would have their trials postponed, and they not infrequently vanished from the Territory between terms, never to be seen again. Others who awaited trial in jail would remain incarcerated for months, only to be proved innocent when the trials were finally held.

In holding two terms annually in each of the seven counties the chief justice traveled approximately 650 miles by stage and on horseback. The judge of the third district, assuming he held both terms in each of his counties and attended the Supreme Court term in Santa Fe, had to travel more than 1,500 miles in the same manner. Until 1870 the remuneration for these judicial positions was \$2,500 a year, and out of this amount the judges paid most of their own traveling expenses. Finding able lawyers willing to make the sacrifice of coming out to New Mexico to accept these positions proved difficult under these circumstances. From 1869 to 1872 five different appointments were made to fill the vacancy in the third judicial district. Two of the judges, Bergen and Waters, held one term each, had enough and returned east; Judge J. R. Lewis, appointed in the summer of 1871, never came out. By an act of Congress approved June 17, 1870,²⁰ the salaries of the justices were increased to \$3,000 and, while it helped, the remuneration still remained

20. 16 U. S. Stats. at Large 152.

inadequate considering the hardships and the character of the services required.

As part of his program to economize, as well as incidentally to relieve the members of the judiciary, Governor Marsh Giddings recommended to the twentieth legislative assembly in December, 1871, that the district courts be required to conduct but one instead of two terms in each county annually. This blanket arrangement, however, as pointed out by the press, would have had certain serious disadvantages in effecting a speedy administration of justice. While one term a year might, temporarily, have been adequate in counties where the amount of litigation was small as in Taos, Rio Arriba and Santa Ana, there were other counties, particularly Santa Fe and Mora in which even two terms already appeared inadequate. The suggestion did not become law.

Judge Palen tolerated no compromise with what he thought was right and he never shrank from the performance of any duty devolving upon him. In the case of *Antonio Maria Armijo v. New Mexico*, 1 N. M. 580, all proceedings in the district court had been *ex parte*, without notice to the defendant Armijo. The proceedings prior to final judgment were had in chambers, during vacation, when no term of the district court was formally in session. Judge Palen, being apprised of this state of affairs, without going to the customary expedient of citing authorities, in a two paragraph opinion summarily held that the peremptory mandamus ordered in the cause was unauthorized and that the final judgment rendered in term was erroneous for failure of notice to the defendant.

As was to be expected, however, there were those among the litigants whose cases were adversely decided who developed an animosity toward the able jurist. Antagonism crept in, also, because of his apparent friendliness toward the so-called "Santa Fe Ring" which counted Attorney T. B. Catron among its avowed leaders. On Saturday afternoon, December 30, 1871, timed so as to miss the scrutiny and publicity of the daily press, there was introduced into the Territorial legislature "violently and with unseemly haste," according to the *Santa Fe New Mexican*, and passed without being printed,

a bill designed to assign Chief Justice Palen to the third judicial district and to bring Associate Justice D. B. Johnson to the first. The governor, Marsh Giddings, was not in any similar hurry, however, to sign the measure, and word of the hasty passage of the bill soon reached Judge Palen's friends and supporters. Most members of the Santa Fe bar and "nearly every United States officer in the Territory belonging to the civil service (excepting the postmasters)," as well as many prominent citizens, appealed to the governor to veto the measure which they insisted was "an outrage upon every principle of fairness and manliness," that it was in direct violation of law, that it had been instigated by malice and by the fear of a righteous judgment, and that it had been secured in indecent haste and without consideration by false statements made to the members of the legislature. Those who thus entreated the chief executive included a number of members of the legislature itself who, disillusioned, urged that if it were possible that act should never go into effect.

On the other hand, the governor received some 140 written communications, part of them from members of the Council and the House representing the southern and western portions of the Territory, expressing unqualified approval of the legislative action. Some of the communications were written at the express instigation and request of Judge Palen's adversaries, including a number written by mere boys, and others which were forged.

The *Daily New Mexican*, a staunch supporter of the chief justice, lashed out editorially against the measure. Passage, it declared, had been procured through gross misrepresentation. The editorial continued:

The purpose of the men who secured the passage of the bill is to annoy, injure, and weaken the influence of Judge Palen. . . . The action of the legislature is an insult to the judiciary, a violence to the interests of the Territory and a severe blow to the pure and untrammelled administration of the laws.²¹

After reviewing Judge Palen's record on the bench in New Mexico and extolling his virtues, the article added:

21. *Daily New Mexican*, Jan. 2, 1872.

Such a man is not to be injured by any such unworthy and disgraceful action as the passage of the iniquitous measure which assigns him to the least important district of the Territory; but the cause of justice suffers, the interests of the Territory suffer, and the character of our Territory suffers greatly. Such legislation as this inspired by personal malice and for the accomplishment of personal ends, has always been the bane of New Mexico, and if it continues, if judges are to be insulted and annoyed to gratify the resentment of personal enemies, it will become impossible to secure men of character to fill our judicial offices.

On January 4, the governor, caught between pressure from the two camps, after reviewing the matter from as impartial a point of view as possible, returned the bill to the House of Representatives where it had originated, with a wordy veto message detailing the reasons for his action. He directed attention to the various arguments advanced for and against the legislation and then justified his veto on legal grounds. He first quoted Sec. 16 of the Organic Act,²² which reads as follows:

Temporarily and until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

He then pointed out that soon after passage of the Organic Act the legislative assembly did assign the judges to the several districts, giving to Chief Justice Baker the first district. Thereafter, as the office of chief justice became vacant it was filled from Washington and the judge in every instance proceeded to Santa Fe and occupied the position of chief justice of the Territory, without any further assignment of any kind by the Territorial assembly. "There was no place for a judge until a vacancy occurred," he argued, "and when a vacancy occurred it was filled by Congress, and the judge was sent out to fill that particular vacancy and no

22. 9 U. S. Stats. at Large 446.

other." "Thus," he explained, "each succeeding chief justice entered upon the duties in the same district without any assignment whatever except the first."²³

The governor pointed out that in 1863 the legislature had undertaken to divide the Territory into three judicial districts and that in the second section of the law it had been provided "that the Honorable Kirby Benedict, Chief Justice, be and is hereby assigned, as now provided by law, to the first judicial district." Acknowledging that certain parties had drawn his attention to this second section to prove that the legislature had from time to time assigned the judges to their several districts, he declared that "if it proves anything, [it] proves exactly the opposite."

The 1863 legislature in using the words "as now provided by law," he argued, referred to "the original act assigning in the first instance the judges, and by which the Chief Justice [was assigned] to the Santa Fe district." He continued:

If the Legislature did not refer to this original act, to what act did it refer when using the words 'as now provided by law'? I do not find any other act to which this language could properly apply; and of course the Legislature by this language clearly and distinctly recognized the original assigning [of] judges as of binding force, and that each subsequent judge took his place as Chief Justice by succession growing out of vacancy, and appointment, to fill that particular vacancy in the same district to which the Chief Justice was originally assigned.²⁴

Finally, the governor reviewed the earlier attempt at reassignment a few years before which contemplated shifting Chief Justice Watts to the third district. He mentioned that Governor Mitchell had submitted the act to the attorney general and other able legal counsel, all of whom had concluded that such a change and reassignment could not be legally made.

Governor Giddings' veto was sustained on January 12 in the House of Representatives by a vote of twelve to four.

Before the excitement of the move to shift the judges

23. N. M. Legislature, *Diario del consejo legislativo*, 1871-72 (Santa Fe, 1872), p. 162.

24. *Ibid.*, p. 163.

subsided the Supreme Court was called upon to settle one of the most fantastic political developments that ever transpired in the Territory, one which was in a measure an outgrowth of the frustrated attempt to re-assign the members of the Court.

On January 5, 1872, the seats of Buenaventura Lobato, Juan Antonio Sanchez, Antonio Tircio Gallegos, Republican members of the House of Representatives from Taos County, and the seat of Antonio de Jesus Sisneros, who had died, were declared vacant, though no contests and no charges were pending against the three Taos men to justify such action. The move was effected through the coalition of several former Republicans elected on a bolters' ticket with the strong Democratic minority in the House. In their places the coalition named Mateo Romero, Juan B. Gonzales and Francisco Antonio Montoya, all Democrats, who were admitted to the ousted Republicans' seats.

On January 10 Speaker Milnor Rudolph declared the House adjourned. Eleven Democratic members remained, elected their own speaker, justifying the action on a theory that no poll had been taken of the House on the question of adjournment, and continued to transact business, not the least of which was that of making an order for the arrest of Speaker Rudolph, Julian Montoya, Juan Cristobal Chaves and several other Republican members. Arrested and detained in jail these men, through their attorneys, brought habeas corpus proceedings before the Supreme Court to obtain their release.

The *Daily New Mexican*, strongly partisan and supporting the Republican majority in the House, broke out in horrified indignation over these developments. It ominously warned:

Upon receipt of the Governor's message [vetoing the re-assignment bill] the House undertook to execute a revolutionary programme which, if successful, will shock the moral sense of every man of character and render insecure, in this Territory, all the rights that men hold dear and sacred.²⁵

Three days later the paper commented:

They [the Republican bolters] have developed sufficient influence with the bitter adversaries of the party which they brazenly affect

25. *Daily New Mexican*, Jan. 5, 1872.

to support that they may strike it more effectively to secure the expulsion of three Republicans from the House of Representatives by the most astounding lawlessness ever enacted in a legislative body in the civilized world, and the filling of their places, and also of a vacancy occasioned by the death of another Republican member, with Democrats, thus assassinating the Republican party in the House, and turning that branch to the Democrats also.²⁶

The case came before the Supreme Court under the style of *United States ex. rel. J. Bonifacio Chaves et al. v. John R. Johnson, Alejandro Branch, H. Clay Carson and Daniel Tappan*. The opinion of the Court is not officially reported in the printed New Mexico Reports, and there is evidence tending to show that the decision and other papers in the case which were placed on file in the office of the clerk of the Supreme Court were mysteriously lost or stolen. The majority opinion was written by Judge Hezekiah S. Johnson and was concurred in by Chief Justice Palen. Judge Daniel B. Johnson dissented.

The prevailing opinion, according to the newspaper reports,²⁷ held that:

(1) The action of the House of Representatives on the fifth day of January, 1872, whereby the seats of Buenaventura Labato, Juan Antonio Sanchez, Antonio Tircio Gallegos and Antonio de Jesus Sisneros, were declared vacant and Jose Cordoba, Mateo Romero, Juan B. Gonzales and Francisco Antonio Montoya admitted to seats in the House, was unauthorized, illegal, revolutionary and void.

(2) The eleven members of the House of Representatives who remained in the hall of the House after the adjournment by the speaker on the tenth day of January, 1872, had no legal right or authority to order a call of the House or to transact any other business in a legislative capacity, and the order made by said members for the arrest of Milnor Rudolph, Julian Montoya and Juan Cristobal Chaves together with others under such call and the warrant for their arrest, were without authority of law. The arrest and detention of the relators, Milnor Rudolph, Julian Montoya and

26. *Ibid.*, Jan. 8, 1872.

27. *Daily New Mexican*, Jan. 22, 1872.

Juan Cristobal Chaves by virtue of such warrant was therefore illegal.

Judge Daniel B. Johnson dissented upon the following grounds:

(1) The Court had no jurisdiction in the case as the affidavit filed for the relators did not show that the parties were arrested in violation of a United States law.

(2) The affidavit did not show that the parties restrained were in such condition that they could not have made their own affidavits asking the issuance of a writ of habeas corpus.

(3) The House was regularly convened at 1:30 P. M. on the tenth and was not dissolved by the act of the speaker and could not be except by vote of the House, and the members who remained had a right to adopt their own mode of securing a quorum.

(4) The government is divided into three branches, the executive, the legislative and the judiciary; each one is independent of the other and the judiciary has no right to determine who are entitled to seats in the legislature, or to interfere with the executive department. Were this power usurped there would be no such thing as an independent exercise of its functions by each branch of the government and consequently no safety in the government.

The decision of the court brought forth an immediate and bitter outburst of criticism from the pro-Democratic newspapers over the Territory, particularly from the *Las Cruces Borderer* and the *Las Vegas Mail*. The *Borderer* in its issue of January 24, 1872, referred to Judge Hezekiah S. Johnson as the "puppet" of Chief Justice Palen in writing the opinion.²⁸ The *Las Vegas Mail* criticised Judge Palen in a series of articles accusing him of disregarding the public interest. So bitter, in fact, were these attacks that friends of the judge called a mass meeting in the Meadow City at which a series of resolutions was drawn up denouncing the articles in the paper and expressing the fullest confidence in the ability, integrity and devotion to the public interest by Chief Justice Palen.

28. *Daily New Mexican*, Jan. 31, 1872.

Shortly after the Las Vegas demonstration and while Judge Palen was conducting court in Colfax county, threatening notes were being circulated with the apparent purpose of intimidating him. However, the jurist gave no outward manifestations of concern as a result of such threats.

Republican papers throughout the Territory joined the newspaper war in support of Chief Justice Palen and were biased in his behalf just as much as papers of the opposing faction were pitted against him.

Judge Palen continued to disregard the envious pack that was barking at his heels. And, unable to ruffle the judge, the antagonism that had been directed toward him gradually died down. His judgments and decrees continued, in the main, to grow in favor and meet with general approval throughout the Territory. The remainder of his tenure upon the bench passed with a minimum of interference.

Those who knew him personally appear to be unanimous in their opinion that Judge Palen was probably the ablest jurist to occupy the New Mexico Territorial bench. The following summary from the report of the Committee on Legal Biography of the New Mexico Bar Association in 1890 is illustrative of the high esteem in which he was held by his fellow members of the bar :

As a lawyer Judge Palen was distinguished for his quick apprehension, his accurate and extensive knowledge, his careful and thorough preparation, his skill and uniform success in the trial of his causes and his loyal devotion to his client's interests. His mind seemed to be adapted to the investigation and comprehension of legal principles and to reach conclusions almost by intuition. He rarely made a mistake. As a practitioner in the Equity Court particularly he was regarded by the older and more enlightened members of the profession as being one of the ablest at the bar and his opinions were always accepted by them with the greatest respect.²⁹

He died in office on December 21, 1875.

29. N. M. Bar Association, *Minutes*, 1890. (Report of Committee on legal biography), p. 49.

Notes and Documents

The *Estancia News-Herald*, January 30, 1947, carries an article by Eva Frances Douglas on "A Pioneer Woman." The subject of this article is Alice Douglas Rea who died recently in Belen at the age of ninety-four. Mrs. Rea was acquainted with many distinguished citizens of New Mexico, and a study of her life might bring additional information to the over-all history of New Mexico.

The *Eddy County News*, April 25, 1947, carries a story of Mrs. Casimira Gomez, who emigrated from Old Mexico across Texas and settled in Old Eddy, or present-day Carlsbad, in the year 1843.

In the *Sierra County Advocate*, April 4, 1947, is a story of Mrs. Frances Dines who, with her husband Jacob Dines, settled at the "Adobe Ranch" on the headwaters of the Gila river in 1881 or a little earlier.

George E. Moffett, a member of the New Mexico Constitutional Convention in 1910, died Tuesday morning at the home of his granddaughter, Mrs. Connie Danley in Alamo-gordo. Moffett, 83, was the grandfather of Marion and Edwin Bell of Carlsbad. The *Daily Current-Argus*, April 23, 1947.

*To

The Commanding Officer of the Escort of Dragoons for the Santa Fe Caravan, On the Road to Camp Holmes.

Santa Fe Trace, Near Coop Timbers, May 12, 1839

Dear Sir:

As our provisions (that is our meat) are running short, we will find it impossible to make regular travel until we come to buffalo[es]. So, should we not find buffalo[es] within reach of Camp Holmes, we will have to continue a few miles beyond, where we will await your arrival.

We have laid bye [sic] already between two and three days, and have been one day at the Camp.

* Submitted for publication by Howard T. Dimick. See his article in this issue of the REVIEW.

We hope you will be up with us very shortly, as we are anxious to continue our regular travels. It is all important to us to arrive early at Santa Fe.

We have the honor to be, Dear Sir,

Your very Obt. Servt.

John and Josiah Gregg

To

The Commanding Officer
of the Escort of Dragoons,
intended to accompany The
Santa Fe Caravan.

N. B. We have not the pleasure of knowing who commands the Escort—therefore are compelled to address as above.

George J. Undreiner, "Fray Marcos de Niza and his Journey to Cibola," *The Americas*, April, 1947, is a revaluation of the story of the worthy Friar who "must be accorded, at least upon the strength of his *Relación*, the title of discoverer of Arizona and New Mexico and of explorer of part of Arizona."

Book Reviews

Blood Brother. By Elliott Arnold. Duell, Sloan & Pearce, New York, 1947; 558 pp. \$3.00.

With a heavy mixture of ethnology, history, geography and romance, Mr. Elliott Arnold has written an uneven but interesting historical novel of the relations of the Anglo-Americans and the Chiricahua Apache Indians during the years 1856-1874. The story deals mainly with the strange and perhaps questionable friendship of two of the most noted characters ever to live in the territory known as the Gadsden Purchase—the friendship between the fearless frontiersman and unique Indian agent, Thomas J. Jeffords, and the blood-thirsty avenger and astute Chiricahua war chief, Cochise. Mr. Arnold in his description and analysis of this complex friendship appears to be essentially concerned with the blood brotherhood of all men and races. This purpose is satisfactorily achieved, if one will overlook numerous historical aberrations, within the premises set forth in the pages of the *Author's Notes*.

Jeffords and Cochise were strong characters in their restricted spheres, and each may have grown in stature with the passage of time. Neither of them, however, is included in the *Dictionary of American Biography*. Obviously, the endowment of Cochise with such extraordinary philosophical power is a matter of Mr. Arnold's vivid imagination; it is ludicrous from the historical standpoint. However, there is no question about the peculiar friendship of these two interesting men and of a probable growth in its intensity until death brought it to an end. And whether or not sales and exchanges of ammunition by Jeffords to Cochise first brought these men together (as apparently sound evidence of their contemporaries tends to show), a lasting and singularly sincere friendship which proved to be of great value in Indian relations in the Southwest did result. Related to the pattern followed by the government the problem of Apache control was greatly lessened thereby, as well as the time required to subject the last of the irreconcilables under the notorious Gerónimo.

Mr. Arnold reaches his worst low in precipitating Jeffords into the field of romance. His love affair and marriage to the innocent Apache maid, Sonseeahray, degenerates to a point where Jeffords can only be characterized as a rank sensualist. Nudism has no place in Jefford's life, and it is unfortunate that Mr. Arnold has cluttered his book with it. The case of Terry Weaver is sufficiently sophisticated, but for some reason it fails to click as an authentic love affair of the times.

There are other weaknesses in the book. In numerous places the story drags and becomes bore-some when too much attention is given to ethnological considerations of doubtful authenticity. The language here and there is quite modern, *a la Hollywood*, and is most incongruous in the conversations of the period covered by the novel. Then, too, it is doubtful if in recent times Hollywood has had a meaner fight or a longer drawn out death than in the instances depicted in chapter five.

But by and large *Blood Brother* is a very readable book. It characterizes well, describes beautifully and introduces constructive bits of philosophy at most opportune moments. It abounds in drama. A spirit of genuine charity and understanding also is evident throughout the long story, and though the mosaic frequently grows devious and complex, yet the author never strays far from his compelling thesis—the blood brotherhood of all men and races.

R. H. OGLE.

Phoenix, Arizona

The Spanish Empire in America. By Clarence H. Haring. New York, Oxford University Press, 1947. Pp. vii, 388. \$5.00.

Students have in this volume a much needed fundamental discussion of institutions in colonial Spanish America. Aside from sources, too often unavailable, and some monographs dealing with specific phases of institutional history, there has been a dearth of satisfying material.

America was largely conquered and organized by Spain and Portugal. Spain, but recently unified by the marriage

of Isabella and Ferdinand (1469), had widely divergent political conditions. To absolutist Castile and Isabella and not to more liberal Aragon fell the heritage of America, and thus the Castilian institutions, modified and adapted, were transferred to the New World with the *conquistadores*. Beginning in Española, Admiral and Adelantado Columbus first undertook the task of "trying to control a frontier community thousands of miles from the home base." Administrators and royal instructions directed the establishment of Castilian institutions as a means of control.

Motives for colonization range from adventure, riches, and religious zeal to an escape from conditions in Europe. Comparisons between English and Spanish colonial developments are skillfully analyzed. With settlement came the problem of a labor supply because the Spaniards had "an aversion to manual toil." This problem brought the practice of *repartimiento* and *encomienda* grants. A masterful outline of the system with its legal restrictions, projected, announced and modified changes, and its final disappearance in the 18th Century merits praise.

16th Century territorial organization of the conquests from California to the southern straits first fell into two viceroyalties, New Spain and Peru, subdivided into jurisdictions under governors, captains-general and *audiencias* who shared the rule while supervised by viceroys. The first pledges of rights and obligations were forgotten in the maze of regulations and the corruption of administration. 18th Century Bourbon reforms brought new viceroyalties but failed to solve the problems.

Colonial administration found its source in Spain in the Royal and Supreme Council of the Indies created in 1524 under Charles V and absolute in legislation, finance, justice, commerce, military and ecclesiastical affairs. The *Casa de Contratación* (House of Trade) set up in 1503 and subject to the Council dealt with colonial economy. Bourbon reforms, especially those of Charles III, transferred the power to Cabinet ministers. But the Bourbons failed to unite the colonies or reform the abuses. Divergencies due to geography, economic conditions, different social organizations

and ethnic composition "combine to produce fundamental divergencies . . . that account for the destruction of the Old Spanish unity in the 19th Century."

These especially created institutions sitting in Spain defined the powers and privileges of the viceroys and the functions of the *audiencias*. Provincial administration was under governors, *corregidores* and *alcaldes mayores*. Official checks on the efficiency of administrators was attempted through the *residencia* and *visitas*. For the local unit of government there was the *cabildo*. "It was the only institution in which the creole . . . was largely represented. And it was one of the few institutions which retained even a small measure of local autonomy." Mr. Haring points out that the *cabildo* was not a potent factor in training for democracy. In the *cabildo abierto* (open *cabildo*) however, although called at irregular intervals, "the people made their first attempts at self-government."

"Another branch of royal administration" was the Church. Through the Church Spain "transmitted to America her culture, and in large measure her political ascendancy." Friars came first and their zeal for the welfare of their converts led to controversy with administrators over the exploitation of the natives. Secular clergy followed and bitter struggles ensued over "ecclesiastical jurisdiction and sacramental privilege." Acquisition of wealth by the Church and the attendant political influence was one of the most "troublesome problems bequeathed" by colonial Spain to the new republics.

With the Church went early education, first designed for the Indian converts but soon facing the colonial stratified society which came with racial mixtures and creole groups. Monks and priests were the teachers and much of the literature and art came from the religious. Sermons, chronicles, and theological treatises gave way to writings by laymen who felt the influence of French and other European schools.

Mr. Haring analyzes the economic life of the colonies, the Spanish monopolistic mercantilism and subsequent decline. Although Bourbon reforms brought prosperity, it

was too late, for political independence offered greater opportunity. "Yet had there not been the circumstance of the wars in Europe and a moderate degree of political and economic liberty, the empire might for a time at least have been preserved."

This book is an excellent one, bringing together a mass of information on the institutions and culture of colonial Spanish America. Mr. Haring's discussions of the political machinery and church seem more comprehensive, stimulating, and penetrating to this reviewer than the later chapters on cultural and economic life. Certain inevitable and excusable queries come from the necessary generalities in such a work. There are a few errors due, no doubt, to proof reading (date of Papal Bulls "May and September 1492" p. 9) which will be corrected in subsequent editions. The book is completed with an excellent bibliography.

The volume is a real contribution to the literature of Spanish America and its meticulous scholarship, careful synthesis, and admirable presentation merits unqualified praise.

DOROTHY WOODWARD

University of New Mexico

Necrology

HENRY WARREN KELLY AND JOHN F. MURPHY.—Death by accidental drowning in the Rio Grande at Pilar, Taos County, came to Henry Warren Kelly, aged 29 years, promising young historian, diplomat and businessman, and to his companion, John F. Murphy, aged 28, war veteran, on Sunday forenoon, May 11. Witnesses to the tragic occurrence were Kelly's mother, Mrs. Daniel T. Kelly, a younger son, Booker, and his friend, Carl Walter. Kelly and Murphy had planned to try out a rubber life-raft, one of the kind used by the Army Air Force, preliminary to shooting the rapids higher up the Rio Grande gorge at some later date. They launched the craft in turbulent waters swollen by recent rain, Mrs. Kelly and the two young boys in a station wagon keeping pace with it along the road skirting the river. They had negotiated three rapids when in the fourth the raft turned over throwing the two men against the boulders in the swift stream. Efforts to rescue them by two Albuquerque men who were nearby were futile and the two bodies quickly disappeared from sight, Kelly to be found two days later, eighteen miles further down stream, and Murphy still not found at this writing, two weeks after the accident. An inquest disclosed that Kelly's skull had been fractured in two places from being dashed against rocks in the river bed. The fact that he and another friend, Milan Chiba, had safely traversed the White Rock Canyon of the Rio Grande in a rubber boat last year, had presaged that further attempts to brave the river's strong currents would be free from hazards.

Henry Warren Kelly, son of Mr. and Mrs. Daniel T. Kelly, both scions of noted Southwestern business families, was born at Trinidad, Colorado, on July 23, 1917. He attended St. Michael's College in Santa Fe and prepared for university at Portsmouth Priory School, Portsmouth, Rhode Island, 1933 to 1936, matriculating at Harvard in the fall of the latter year. He graduated in 1940, receiving the A. B. degree, *cum laude*. During his last two years at Harvard, he concentrated on History with special emphasis on Latin

American and Spanish annals. This resulted, after research in manuscript material from the Biblioteca Nacional of Mexico City, in an honor thesis on the New Mexico missions in the mid-eighteenth century which was published in the *New Mexico Historical Review*. Supplementing this interest in historical research, Kelly collected folk songs as well as more modern popular ballads of Latin America, especially those of Mexico and New Mexico, singing these to guitar accompaniment at amateur and professional entertainments. A facile writer, he recently completed for publication, a volume on the Peruvian Amazon. Mastering a good reading, writing and speaking knowledge of Spanish, he also took courses in French, Economics, Government, Geology, Public Speaking and Music Appreciation. He was an interesting conversationalist and a fluent speaker as was manifest in occasional addresses on his experiences in South America.

Kelly, early in life, had traveled extensively in Europe and America. He had visited most of the states in the Union. In the summer of 1933, he attended the International Boy Scout Jamboree at Godollo near Buda-Pest, Hungary, there being awarded the Eagle Scout badge by Scout Chief James E. West. Before returning to the United States he traveled in Hungary, Austria, Germany, Italy, Switzerland, France, Holland and England. He made a tour of French Canada in 1940 including Gaspe Peninsula and Quebec; traveled in Mexico, including Yucatan in 1937, 1939 and 1940; Cuba in 1938; Venezuela in 1941 and 1942; Colombia and Ecuador in 1942; Peru, Chile and Argentina in 1942 to 1945. He climbed the volcanoes of Popocatepetl, 17,800 feet, in 1937, and Orizaba, 18,500 feet, in 1940.

Letterman on the Junior Varsity and later on the Varsity football teams at Portsmouth Priory School, 1934 and 1935, he demonstrated his active interest in athletics. He began boxing while still in St. Michael's College, and won the Santa Fe championship in the 90 and 100 lbs. classes. At Harvard he was captain of the freshman boxing team, 1936, and was the University boxing champion in the 145 lbs. class for 1937, 1938 and 1940, and in the 155 lbs. class

for 1939. Other favorite sports of his were hiking, boating, trout fishing, mountain climbing and horseback riding. He competed in New Mexico rodeos and steer and bronc riding events, and while in school, spent his summers working as a ranch hand on the Gross, Kelly and Company cattle ranch near Las Vegas, New Mexico.

Kelly twice presented himself for induction into military service during the second World War, but was rejected for active duty each time because of poor eyesight. After graduating from Harvard, he was employed in its labor relations department by the Mene Grande Oil Company, a Gulf Oil affiliate, at Caracas, Venezuela, from January 6, 1941, until April 18, 1942, when he returned to the States to present himself for military induction. Classified for limited service, he accepted appointment as vice-consul in charge of the vice-consulate at Iquitos on the upper Amazon in Peru. There he found that an important phase of his work was the shipping of the strategic barbasco root from which rotenone is manufactured for agricultural insecticides and de-lousing powder in great demand in the war-torn countries. In July 1944, he was transferred to a post in the U. S. Embassy at Santiago, Chile, and in October 1944, to the vice-consulate at Punta Arenas, on the Straits of Magellan in Chile, from where he returned in January 1945, to present himself a second time for military induction but being again rejected.

In September 1945, he took a place in the general accounting office of Gross, Kelly & Company, and on February 2, 1946, was elected secretary and a member of the board of directors of this pioneer wholesale grocery firm. It was a crowded and full life Kelly had lived with promise of brilliant achievement in later years, when fate ended his career on a day on which he had started out joyfully for new adventure.

In July 1943, Kelly married Miss Dorothy Turner Smith, at that time holding a position in the American Embassy at Lima, Peru. She had lived for years with her family in China, and was in the office of the American consul-general at Shanghai at the outbreak of the War. Repatriated

on the S. S. Gripsholm she was transferred to the embassy in Lima. Besides his widow and infant son, Kelly is survived by his paternal grandmother, by two younger sisters and three younger brothers. With his companion, John F. Murphy, who died with him in the ill-fated attempt to ride the swollen Rio Grande current, he had been a member of the Choir of Cristo Rey church and of the Santa Fe Rotary Club. Murphy, like Kelly, was interested in the history and archaeology of the Spanish Southwest and but recently was a participant in an aerial archaeological survey of eastern New Mexico. His home was in Tacoma, Washington, and he had been a bomber pilot in the Eighth Air Force, having completed 25 missions over Europe. Stationed at the Albuquerque Convalescent Center, he first came to Santa Fe to take part in a Victory bond drive and liked the place so well that he returned to live, taking employment with the Breese Burners, Inc., laboratories. Among those remaining to mourn him, is Miss Caroline L. Smith of St. Louis, a niece of Mrs. Daniel T. Kelly, whose engagement to marry Murphy was announced in the St. Louis newspapers the very day on which he died.

The Kelly funeral took place on Friday forenoon, May 16, from Cristo Rey church, with Fr. Glynn Patrick Smith officiating, and Archbishop Edwin V. Byrne at the altar. The large, famous church edifice was filled with friends who came to pay their last tribute to the deceased whom they loved and admired. At the Kelly burial plot in historic Rosario Cemetery, Fr. Cletus Kistner pronounced the last rites of the Roman Catholic liturgy. The pall bearers were William Hunker, Milan Chiba, Stalker Reed, Richard Bokum, Theodore Van Soelen, E. N. Stever, Fred Ball, James Kilkenny, and Andrew Anderson, "Hank" Kelly's close friends and business associates.—P. A. F. W.

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New Mexico Historical Review

PAUL L. LARSON
KANSAS CITY, MO.



PALACE OF THE GOVERNORS, SANTA FÉ

PERIODICAL DEPT

October, 1947

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Photo by Robert H. Martin

The Reredos in the Church of Cristo Rey, Santa Fe, N. M.

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THE CHAPEL AND COFRADIA OF OUR LADY OF LIGHT IN SANTA FE

By ELEANOR B. ADAMS*

FOR many years one of the loveliest examples of Spanish colonial art in the United States remained in undeserved obscurity in a back room of the Cathedral of Santa Fe. This is the great carved stone reredos originally made for the Chapel of Our Lady of Light, also known as the Castrense, or Military Chapel, which was erected on the south side of Santa Fe plaza opposite the government palace in 1760. In 1940 the reredos was moved to the new church of Cristo Rey, built under the auspices of Archbishop R. A. Gerkin of Santa Fe, and now that it may again be seen in a worthy setting its early history should be of even more interest than before.

Up to the present the information generally available about the reredos and the chapel which housed it has consisted of a brief reference to it by Bishop Pedro Tamarón of Durango, whose stay in Santa Fe during his episcopal visitation of New Mexico occurred while the Chapel of Our Lady of Light was still under construction, and various short descriptions of the already decayed and neglected chapel written by persons who had occasion to be in Santa Fe in the 1840's and 1850's just before and during the early days of the American occupation. Sometime before the sale of the chapel in 1859 Bishop Lamy had the reredos taken to the

* Research Assistant, Carnegie Institution of Washington, D. C.

parish church of Santa Fe for safekeeping, and there it remained for more than eighty years.¹

Early in 1776 Fray Francisco Atanasio Domínguez was sent to New Mexico by the Provincial of the Franciscan Order in Mexico City, Fray Isidro Murillo, to make a formal inspection of the missions of the Custody of St. Paul. After his return to El Paso in May, 1777, Father Domínguez forwarded a detailed report on interior New Mexico to his superior.² In this lengthy document we find an interesting and comprehensive account of the Chapel of Our Lady of Light and the confraternity attached to it, written some sixteen years after they were founded. At the time of Domínguez' visit both were flourishing, and his impressions were, on the whole, highly favorable. The chapel and cofradía were dependent on the Mitre of Durango, of whose vast diocese New Mexico was then a part, and the cofradía had to give an accounting to the bishop's vicar in New Mexico every three years. Although the Franciscan Order had no real authority over this church and its cofradía, the lack of secular clergy in the province made it inevitable that friars should officiate at most of the religious functions, therefore Domínguez felt that it was proper and necessary for him to give as complete a description of it as he did of the missions.

According to Domínguez, "In the year 1760 Don Francisco Marín del Valle, then governor of this kingdom, dis-

1. Pedro Tamarón y Romeral, "Demostración del vastísimo obispado de la Nueva Vizcaya, 1765," *Biblioteca Histórica Mexicana de Obras Inéditas*, vol. 7 (Mexico, 1937); Report of Lieut. J. W. Abert to Col. J. J. Abert, chief of the corps of topographical engineers, in Emery, Abert, Cook, *Notes of a Military Reconnaissance from Fort Leavenworth to San Diego in California* (30th Congress 1st Session Ex. Doc. No. 41); the recollections of Col. Francisco Perea as related to W. H. H. Allison, "Santa Fe as it appeared during the winter of the years 1837 and 1838," and "Santa Fe in 1846," *Old Santa Fé*, vol. 2 (1914-15), pp. 170-83, 392-406; W. H. H. Davis, *El Gringo or New Mexico and her People*, 2nd. ed., Santa Fe, 1938; Frank S. Edwards, *A campaign in New Mexico with Colonel Doniphan*, Philadelphia, 1847. See also James H. Defourl, *Historical Sketch of the Catholic Church in New Mexico*, San Francisco, 1887; and Col. Henry Inman, *The Old Santa Fé Trail*, New York, 1898. A. Von Wuthenau presents the most comprehensive treatment of the subject in "The Spanish Military Chapels in Santa Fé and the reareds of Our Lady of Light," *NEW MEXICO HISTORICAL REVIEW*, vol. 10, no. 3 (July, 1935), pp. 175-94.

2. *Biblioteca Nacional, México*, leg. 10, doc. 43. For a brief summary of the nature of the report, see E. B. Adams, "Two Colonial New Mexico Libraries, 1704, 1776," *N. M. HIST. REV.*, vol 19, no. 2 (April, 1944), p. 143.

played the glowing and fervent ardor of his devotion to Our Lady and Mother of Light by his plan to build a chapel for her in this Villa of Santa Fe." For this purpose the governor bought a site on the plaza directly opposite the government palace and about two musket shots down the street from the gate of the cemetery of the parish church. Construction must have been started immediately. It is possible that Domínguez gives too late a date for the beginning of the chapel, for Marín del Valle held office from 1754 to 1760³ and the building was well along by the middle of 1760. In that year Bishop Tamarón arrived in Santa Fe, and although the chapel was not yet completed, Marín del Valle took advantage of the prelate's presence to found the Cofradía of Our Lady of Light with the episcopal blessing. Therefore, on June 3, 1760, he presented to the bishop the Constitutions for the cofradía,⁴ which he had drawn up himself, and Tamarón approved them and conceded certain graces and indulgences to those who should become members. The first meeting took place on June 5 in the sacristy of the unfinished chapel. Bishop Tamarón presided, and Governor Marín, Don Santiago Roibal, the bishop's vicar and ecclesiastical judge in Santa Fe, and the other founding members took oath before him to defend the doctrine of the Immaculate Conception. This was one of the chief requirements for membership. In the election which followed Marín was made *hermano mayor*, and the bishop formally approved his election and that of the other officers. Apparently the governor had tactfully absented himself from this part of the proceedings, for the Congregation voted to wait upon him in a body to notify him of the results. No church function took place until the following year, but Tamarón consecrated the altars before he left Santa Fe.

The governor endowed the cofradía with 530 head of

3. L. B. Bloom, "The Governors of New Mexico," N. M. HIST. REV., vol. 10, no. 2 (April, 1935), pp. 152-57.

4. The constitutions were later printed in Mexico City at Marín del Valle's expense. *Constituciones de la Congregación de Nuestra Señora de la Luz*, Mexico, 1766. The library of the Historical Society of New Mexico has a photostat copy. Domínguez mentions this edition and says that there was a copy of it "in the little archive of the Cofradía."

ewes, and the members gave two pesos each when they were admitted to the brotherhood and a peso a year thereafter. At the time of Domínguez' visit in 1776 the Cofradía of Our Lady of Light had a capital of 1070 ewes, with an income of 214 sheep and 12 fleeces of wool per year. Since there was little or no money current in New Mexico at the time, all transactions were made in kind at the prevailing rate. Domínguez tells us that sheep were reckoned at two pesos per head. This cofradía was in excellent financial condition and was well able to pay its annual expenses out of income, although the accounts of the other cofradías show that most of them were in arrears.

The Constitutions state that since a church was being built for Our Lady of Light, it was an opportune time to found a Congregation in it dedicated to "the greatest and most permanent cult of Most Holy Mary, with the advocacy of Light, and to the suffrage to the souls of its deceased brethren." It was to be principally for citizens of New Mexico, but those of other provinces were not excluded. Women could belong, to the extent that their names could be recorded in the *Libro de Congregantes*, but they were not allowed to attend the meetings or to take any active part in cofradía affairs. A candidate for membership had to be "a respectable person of good life." In addition to swearing to defend the doctrine of the Immaculate Conception and paying the entrance fees and annual dues, the brothers were supposed to pay for certain masses. The Constitutions give the order to be observed at cofradía functions with characteristic Spanish regard for problems of precedence. The officers to be elected and the duties of each are also specified.

The chief feast, of course, was that of Our Lady of Light, which was celebrated on May 21 with vespers, mass, sermon, and procession. The following day, May 22, was the anniversary of the deceased brethren, with vigil, mass, and responsory.

August 15, the Assumption, was observed with a mass and procession. From the Domínguez report we learn that through the efforts of the founder, Marín del Valle, Pope

Clement XIII issued a brief, dated at Rome, March 22, 1764, "in which His Holiness concedes plenary indulgence and remission of all sins to persons (of both sexes) who, having confessed and received communion, and praying for the extirpation of heresies, etc., shall visit this said church on one of the feasts of Our Lady which the ordinary may designate . . . And on the other six feasts of Our Lady, praying for the same after having confessed and received the Sacrament, the faithful shall obtain seven years and seven times forty days of pardon." The indulgence was granted for a fifteen-year period, which came to an end in 1779. This apostolic brief was passed upon by the Council, Commissary of the Crusade, and Mitre of Durango, and the feast of the Assumption was designated. When Domínguez arrived in 1776, he was horrified to find that the people of New Mexico considered this indulgence a jubilee and that "with the knowledge and toleration of the ecclesiastical and secular judges, and of the ministers (who, out of respect for the aforementioned judges, kept silent, fearful of not finding protection in those who should have upheld their proper zeal) the Most Divine Eucharistic Bread was taken in procession from the parish church to this chapel on the morning of the fifteenth, and such Sovereign Majesty remained exposed in the chapel until sunset so that the obligations to win the aforesaid indulgence might be performed. Then our best Sun, Light, Love, and Life returned in procession to His house, or tabernacle." The good father immediately took steps to eradicate this abuse and informed the governing board of the *cofradía* that this could not and must not be done under any pretext whatever. He also left his patent as superior for the vice-custodian and minister of Santa Fe, Fray José Medrano, and his successors, strictly forbidding the removal of the sacrament from the parish church to the Chapel of Our Lady of Light on any occasion, since this was not conceded by the apostolic brief nor was it necessary in order for the faithful to win the indulgence. Moreover, he had found no authentic license from the Bishop of Durango which would permit the exposition of the Host.

The third annual feast celebrated by the Cofradía of Our Lady of Light was that of Our Lady of Valvanera,⁵ on September 10, with vespers, mass, and procession.

The following expenditure was made for these feasts: "For May 21, 25 pesos in sheep. For the anniversary, 15 pesos in the same. For August 15, 12 pesos in 6 sheep. For September 10, 25 pesos in sheep. For the sermon of May 21 the preacher is given 25 pesos in sheep. One *arroba* of wax per year.⁶ About 2 jugs of wine. What wine and wax is left over remains in the Cofradía."

Although the feast of Our Lady of Light falls on May 21, for some reason the ceremonies for the inauguration of the new chapel began two days later on May 23, 1761. They lasted five days, and everything possible was done to make the occasion a memorable one. On the afternoon of the twenty-third Vicar Don Santiago Roibal blessed the chapel in the presence of the Franciscan custodian, Fray Jacobo de Castro, Vice-Custodian Fray Manuel Zambrano, six other friars, the governor *ad interim*, Don Manuel Portillo Urrisola, the troop of the royal presidio, and the members of the cofradía and other persons of distinction. Marín del Valle had ceased to be governor of New Mexico late in 1760, and Portillo y Urrisola was the second acting governor to take office in 1760-61.⁷ Since Domínguez makes no specific mention of the presence of the founder at these ceremonies, it seems probable that he had left the province. Nevertheless he paid all the expenses for the first day of the solemnities. The cofradía paid the costs on the succeeding days.

On May 24 Father Roibal celebrated mass, and the Father Custodian preached the sermon. Fray Tomás Murciano de la Cruz had been assigned this task but was ill. On the

5. The miraculous image of Our Lady of Valvanera was found in the hollow of an oak, surrounded by a swarm of bees, at Valvanera, Logroño, Spain, in the tenth century. The circumstances attending this discovery led to the foundation of the Benedictine monastery of Our Lady of Valvanera, which became a place of pilgrimage. The cult of the Virgin of Valvanera spread throughout Spain and later to the Americas, especially Mexico. Espasa-Calpe, S. A., eds., *Enciclopedia Universal Ilustrada*, vol. 66, pp. 853-56.

6. The arroba weighs approximately 25 pounds.

7. Bloom, "The Governors of New Mexico."

twenty-fifth Custodian Castro was the celebrant, and Fray Miguel Campos preached. On the twenty-sixth Fray Manuel Rojo, the vicar and ecclesiastical judge of Albuquerque, said mass, and the sermon was given by Fray Francisco Guzmán. May 27 was devoted to exequies for the deceased brothers,⁸ and Fray Joaquín Pérez sang mass. "On all the said days eighty large candles of fine wax burned on the altar." With the exception of the last day, *comedias* were performed every afternoon.

The description of the Chapel of Our Lady of Light shows that Governor Marín del Valle spared no effort or expense in carrying out his plan. In addition to buying the land and endowing the *cofradía* he was responsible for all the cost of construction and decoration. After describing the exact location of the chapel Domínguez continues as follows:

It is of adobes with walls a *vara* thick.⁹ Its door faces due north, and just above there is a medallion of white stone with Our Lady of Light in half relief. At the very top, on the azotea, there are three arches, a large one in the center with a good middle-sized bell, and two small ones on either side without anything.

It is 24 varas long from the door to the mouth of the transept, 8 varas wide, and 9½ high up to the entablature. From the mouth of the transept to the presbytery there are 7 varas, by 15 in width and 11 in height because of the clerestory, which is as I described it in the principal church. One ascends to the presbytery by four octagonal steps of white stone, and the whole presbytery is tiled with said stone, and in it there are three sepulchers. Its area is 7 varas square, and it is as high as the transept. There is a choir across the chapel in the usual place, and it projects 5 varas into the chapel with a balustraded railing; it rests upon fourteen carved beams which are supported by a large carved and corbeled beam set into the lateral walls.

On the Evangel side there are three windows like those of the principal church; they face east, and one is in the front of the transept and the other two in the body of the chapel. . . . [The main door] is set in a strong wooden frame, has two leaves made of boards, with a wicket in one, and good keys. It is 3 varas high and correspondingly broad. The cementary is a little enclosure, or wall, of adobes more than

8. According to the Constitutions it was possible for members of the confraternity to enroll in the Congregation any deceased persons they might wish, with the obligation to have a mass said for each one annually so long as the benefactor should live.

9. The Mexican vara is 32.99 inches.

a vara high, with a gate opposite the chapel door, and its area is that sufficient for a small cementary.

The ceiling of this chapel is of carved and corbeled beams, and there are twenty-eight of them in the body of the chapel. The aforesaid clerestory is on the one which faces the presbytery. In the transept there are nineteen like the aforesaid running crosswise from those of the body of the chapel. In the presbytery there are ten exactly like those mentioned, but across the width like those of the body of the chapel, and a false vaulted arch like that mentioned in the presbytery of the principal church.

The report goes on to describe the furnishings of the chapel in detail, beginning with the high altar.

The reredos is all of a white stone (about which I shall give information in a separate place) very easy to carve. It consists of three sections. In the center of the first, as if enthroned, is an ordinary oil painting with a painted frame of Our Lady of Light, which was brought from Mexico at the aforesaid Sr. Marín's expense. He also provided the curtain it has, which is of crimson damask with silver braid. On the right side of this image is St. Ignatius de Loyola, and on the left St. Francis Solano. Toward the middle of the second section is St. James the Apostle, and beside him, St. Joseph on the right and St. John Nepomuceno on the left. The third section has only Our Lady of Valvanera, and the Eternal Father at the top.

All these images, with the exception of Our Lady of Light, are in medallions of the same stone of which the reredos is made and carved in half relief, painted as is suitable, and this work resembles a copy of the facades which are now used in famous Mexico.

The frontal of the altar was of carved stone like the reredos, with a small oval of St. Anthony of Padua in the center. There were two altars in the transept on the walls facing the body of the chapel. The one on the right side had an oil painting of the Immaculate Conception in a gilded frame, and that on the left one of St. Francis Xavier. There was another altar which Domínguez does not fully describe, and the aras of these three were of the same stone as the high altar. As has already been said, all four altars had been consecrated by Bishop Tamarón during his episcopal visitation in 1760.

Although Marín del Valle provided the greater part of the church furnishings, a number of residents of New Mexico presented vestments and other items to the chapel. In

addition to some gifts of linen, Father Santiago Roibal, a native of New Mexico and one of the few members of the secular clergy stationed there, donated the pulpit, which was octagonal and of carved stone to match the reredos, with a little wooden stairway leading up to it. Don José Reaño and his wife, Doña Ana Ortiz, gave thirteen small oil paintings, one of Our Lady of Valvanera and the other twelve representing the Apostles, which were placed on one wall of the church. Doña Juana Roibal made a number of gifts, including two wooden screens, two mirrors for the sacristy, a pair of corporals, and two candleholders. Her husband, Don José Moreno, Governor Marín's lieutenant general and one of the original members of the *cofradía*, who was elected treasurer and deputy of feasts, gave a bronze crucifix with silver corner plates for the high altar, eight candleholders of silvered wood, a small china plate with glass cruets, and a Chinese carpet with silk embroidery. The carpet, however, is said to have been on account for 100 pesos that he owed the chapel. Don Juan Francisco Arroniz Riojano, who, with Father Roibal, was elected to the council of the *cofradía* at the first meeting in 1760, gave a complete set of vestments of silver lustrine with gold galloon. Don Pedro Fermín de Mendinueta, governor of New Mexico at the time of Domínguez' visit, gave the chapel four maps and two globes of the world. Other donors of small items were Father García, Doña Josefa de Bustamente, Vicar Don Lorenzo Rivera, Juana Padilla, and Father Cuellar. Everything else in the chapel when Domínguez saw it he presumed to be the gift of the founder.

The sacristy, a room 7 varas long by 5 wide and 4 high, was on the Evangel side of the chapel toward the front of the transept. It had a beamed ceiling, a window to the south, and a door leading into the chapel. There was a table with drawers across the front and a wardrobe surmounted by a wooden cross on each side. The sacristy contained a small image in the round about two feet high of Our Lady of Light, which was kept on the table. There was also a small oil painting of her in a niche, and there were two small wooden images of St. Joseph and St. Anthony of Padua, the latter

said to have been made in Madrid. Domínguez also lists an adequate supply of vestments and linen of good quality, a silver chalice with its paten and spoon, "all gilded, chased, and with Bohemian stones," and a pair of cruets, a small bell, and a plate to match the chalice.

As donor of the chapel Governor Marín del Valle must have had a great deal to say about the details of its design and decoration. Certainly there is nothing in New Mexico to compare with the extraordinary reredos, and with the exception of the governors, the soldiers, the clergy, and some of the wealthier citizens, it is doubtful that many of the residents of the province had ever had an opportunity to see the numerous works of art in Mexico to which it bears a resemblance in style and feeling. Father Domínguez was not an enthusiastic admirer of the general run of ecclesiastical art and architecture in New Mexico, and he was sometimes shocked by the primitive *santos* which excite so much interest today. In one case he even ordered two to be burned because they were too indecent to be borne.¹⁰ Despite his rather dry description of the reredos, he must have felt some admiration for it or he would never have compared it with "the facades which are now used in famous Mexico," or admitted, as he did, that the interior of the chapel was "muy alegre." Unfortunately he says nothing that gives us any clue whatever to the identity of the craftsmen who did the actual work of carving. This is not surprising, for at the time such artists were anonymous more often than not. The decorative detail, which actually includes some Aztec symbols, is typical of some of the work of Indian stone carvers of Mexico in its interesting interpretation of the European forms they were called upon to imitate from the standpoint of a culture upon which Spanish ideas and ways of life had arbitrarily been imposed and never completely assimilated. In the actual rendering of religious subjects they must have

10. These were in the church at San Juan, and had been given to it by one Catarina Pando at the time Father Junco was in charge of the mission. One was supposed to represent Nuestra Señora del Rosario and the other Jesús Nazareno, "and the two are so unworthy that they do not deserve the titles of the Most Holy Persons they wish to represent; for this reason I ordered them to be consumed by fire."

been closely supervised, but they seem often to have been allowed to express themselves more freely in the matter of ornamentation. So far as we know the various indigenous groups of New Mexico had no experience in elaborate carving of this type, and this, plus the definite Mexican elements in the designs, makes it seem probable that Marín del Valle took the trouble to have stone carvers brought from some part of Mexico proper. We know so little about Governor Marín's personality that it is impossible to be certain of his talent in this direction, but he seems the most likely person to have conceived the general plan of the reredos and to have decided upon the subjects to be represented. Domínguez implies that he chose the material which was used and tells us that the stone was brought from "some little hills which are about a league to the northwest of this settlement of *vecinos* [Ranchos de Pujuaque] which I have just mentioned, and on the left side of the highway as we go to La Cañada." Ranchos de Pujuaque was about a league below Nambe.

Documents of the period of Marín's governorship indicate that he was not on entirely amicable terms with the Franciscans and that he was devoted to the Jesuits, even hoping to oust the former from New Mexico in favor of the latter. The cult of Our Lady of Light is said to have been introduced into Mexico by the Jesuits, and the founder of the Society, St. Ignatius de Loyola, occupies the place of honor on her right hand in the lower section of the reredos; but the great Franciscan missionary in America, St. Francis Solano, also occupies a prominent position at her left, so it seems that Marín was not unwilling to do honor to the Franciscans in one of their mission provinces. Another Franciscan missionary, St. Anthony of Padua, was depicted on the altar frontal, and there was a wooden image of him in the sacristy. With the exception of St. James the Apostle, patron of Spain, the choice of the remaining two saints and of Our Lady of Valvanera may have been due to some personal devotion. One of the altars in the transept was dedicated to Loyola's disciple and "Apostle of the Indies," St. Francis Xavier; the

other was of the Immaculate Conception, which is natural in view of the tenets of the *cofradía*.

It has been generally believed that the stone medallion of Our Lady of Light which now occupies the lower center of the reredos was restored to its original position when the altar piece was taken to Cristo Rey in 1940. Domínguez' description quoted above shows that this is not true. The reredos was designed to hold an oil painting of Our Lady of Light which the founder ordered from Mexico City, and it was evidently placed there before the chapel was inaugurated. We do not know what became of this painting, and at one period the niche held a wooden image of St. John Capistrano. Probably it was allowed to fall into decay along with the chapel in the disturbances preceding the American occupation of New Mexico. Frank Edwards, who entered Santa Fe with the American forces in August, 1846, admired the fine carving on each side of the altar (obviously referring to the reredos) and added that "above, there has been a good painting; but the rain has beaten through the roof upon it, and nothing is now left but a head, apparently of an angel, which is beautifully painted." We cannot be certain that he is referring to the painting donated by Governor Marín del Valle, but it is quite possible. He noted the date 1768 on a tomb in the building, which he believed to be much older than it actually was.¹¹

Undoubtedly the representation of Our Lady of Light now in the reredos is the one which was originally over the door of the chapel, although the building must have undergone some changes in the years after Domínguez' visit in 1776. Colonel Perea, who first visited Santa Fe as a boy in the winter of 1837-38, gives the following interesting description of the chapel:

Opposite the Palace stood the military church, called La Castrense, then the handsomest building of its kind in the capital city. This house of worship was most gorgeously adorned within with pictures of saints and other portraits, some of which were said to be very valuable. The altar in every appointment was very tastefully adorned,

11. Edwards, *A campaign in New Mexico with Colonel Doniphan*, p. 47.

and was a thing of dazzling beauty. Outside the church, just above the door, at a convenient distance apart, were two marble slabs built into the wall, and on these were carved pictures of saints, one of which represented Santa Gertrudes, wrapped in the coils of a large serpent, while the other, I believe, represented the mother of Jesus, Nuestra Señora de la Luz (Our Lady of Light), rescuing a human being from Satan. It was claimed these beautiful works of art were brought from Spain, about twenty-five years before, by Don Pedro Bautista Pino, said to have been the only man that ever represented New Mexico in the Spanish Cortez, at Madrid.¹²

The reference to the "two marble slabs" above the door and their history is somewhat puzzling, for the one of Our Lady of Light must surely have been the original medallion placed there when the chapel was built. Whether the St. Gertrude was a gift of Pino or not, it seems unlikely that it was brought from Spain. It must be remembered that Colonel Perea's recollections were recorded many years later, when he was an old man, and may not have been entirely exact. When he again came to Santa Fe in 1846 the church was in very bad condition, and part of the roof had fallen in. The carving of Our Lady of Light was still in place, but St. Gertrude had disappeared. Such decorations of the interior as remained were decaying because of exposure to the elements.¹³ Edwards, who saw the chapel in the same year, says that it had been robbed of its plate and ornaments "some time before we arrived." He believed this to be the reason for its having been allowed to go to ruin.¹⁴ Thus when Perea saw the beautiful chapel in 1837, its short history was already coming to an end. Only seven years later James J. Webb, a merchant who first visited Santa Fe in 1844, mentions the "old church about the centre of the block on the south side of the plaza which had not been occupied as a place of worship for many years."¹⁵ One of the last descriptions we have was written by W. W. H. Davis, who was in New Mexico in

12. Allison, "Santa Fe as it appeared during the winter of the years 1837 and 1838," p. 177.

13. Allison, "Santa Fe in 1846," p. 395.

14. Edwards, *loc. cit.*

15. R. P. Bieber, "The papers of James J. Webb, Santa Fé Merchant, 1844-1861," *Washington University Studies*, vol. 11, Humanistic Series, no. 2 (1924), p. 276.

1854-55. Although he viewed everything New Mexican from a lofty pinnacle of smug superiority, his account of his experiences is extremely interesting. He was quite blind to the beauty of the reredos and considered the building, inside and out, "primitive and unprepossessing." The altar was plain, the ornaments few and cheap. "The wall behind the altar is inlaid with brown stonework wrought in the United States, representing scriptural scenes." Instead of the three arches on the roof of the building described by Father Domínguez, Davis tells of two plain towers in front, both of which contained bells. His account indicates that the church was then being used as a place of worship.¹⁶

According to Colonel Perea, in the early summer of 1849 the Castrense "had been repaired and so altered as to be conveniently used as a store house."¹⁷ When Bishop Lamy arrived the civil authorities were finally forced to turn the chapel over to him as the property of the Church after a most unpleasant episode when Chief Justice Grafton Baker made difficulties about doing so.¹⁸ Public indignation made it impossible for Baker to persist, and for a while the bishop seems to have opened the chapel for religious purposes again. He soon obtained permission from the Holy See to sell it, and in 1859 it was sold to Simón Delgado for a thousand dollars and a piece of land with building thereon adjoining San Miguel Church, which was used for St. Michael's College, founded the same year.¹⁹

The reredos of Our Lady of Light was used in the old parish church for some years thereafter, and it may be that Bishop Lamy, who had taken care to preserve it, wished to give it a prominent position in the new cathedral which was started in 1869. A few years after his death, however, a wall was built separating the reredos from the main part of the new building.

The Church of Cristo Rey, patterned after the traditional

16. Davis, *El Gringo or New Mexico and her People*, pp. 41, 49.

17. Allison, "Santa Fe in 1846," p. 401.

18. R. E. Twitchell, *Leading Facts of New Mexican History*, vol 2 (1912), p. 330, note 257.

19. Defouri, *Historical Sketch of the Catholic Church in New Mexico*, p. 49.

mission architecture of New Mexico and said to be the largest adobe building in the world, was finished in 1940 in time for the celebration of the Coronado Cuarto Centennial, and the reredos of Our Lady of Light was brought to it from the cathedral. Since the beauty of this striking work of art may now be admired in a church built especially to receive it, we can almost be grateful for the lack of perception which relegated it to an inconspicuous place in the late nineteenth century.

SOME PROBLEMS OF EARLY TEXAS NEWSPAPERS

By JAMES W. MARKHAM*

THE rough frontier of the Republic of Texas was not calculated to sustain newspaper enterprises. More than seventy-three newspaper publishing ventures are known to have been established during the ten years between 1836 when the Texans won their independence from Mexico, and 1846, the year of Annexation. Yet one could count on his fingers those papers which survived.

A comment on journalistic conditions in the Republic by an "emigrant, late from the United States," says: "That the Texans are a reading people is manifested by the fact that there are now twelve newspapers published in the Republic. One of these is a daily paper published at Houston, and one or two others are, during the sessions of Congress, semi-weekly ones. In a population so small, and with such imperfect post routes, to sustain so many papers must be admitted to be an astonishing circumstance."

This encouraging picture, in the early 1840's, was more a manifestation of the thriving press at a particular time than a true statement of the situation over the whole period of the Republic. Few of the twelve papers were actually published long and regularly enough to be called periodicals. On the other hand, after 1840, so many papers were started that there must have been excellent prospects.

Among the attractions would-be publishers and editors found among the sparsely settled communities spreading fan-like from Galveston and Nacogdoches inland along the rivers was a great need and insatiate desire for news. "Journalism meets the first tribal need after warmth, food and women," Kipling said. This basic hunger of civilized man for news was whetted among Texans by their lonely, isolated lives.

John C. Duval, recorder of early times in Texas, yarns about the news-hungry proprietor of the Coyote Ranch. The

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rancher, the story goes, leveled "Old Bess," his doubled-barrel shotgun, on a traveler passing by, forcing him to stop over until he had relayed the latest intelligence.

"He was green from the States and chock full of news, and as he was a slow talker and the weather was bad besides, he didn't get away from Coyote for a week!"

In addition to the opportunity for selling newspapers, there were possibilities for community leadership. The desire to attract settlers to Texas, and the lure of political power were other well-tested rewards for successful journalism which attracted some of the leading citizens into the newspaper business.

While an unusually large number of periodicals were started, the death-rate was appalling. Of the 13 newspapers started before 1836 and the 73 started during the Republic, less than a dozen were being printed at any one time during the period. Only a handful¹ survived to print an account of the Annexation of Texas. This is a survival rate of about one out of every ten papers and not many of these published long enough to establish a degree of permanency. Though some two or three of these surviving papers enjoyed a comparatively long period of continuous or intermittent publication, there were many that appeared for only a few issues; others got no further than a prospectus published in several neighboring papers. Though there were no cases of censorship after the Republic was established, several first issues

1. *Texas Newspapers, 1813-1939*, San Jacinto Museum of History Association, Houston, 1941, lists the newspapers and their known period of publication. According to this source, the following newspapers were being published in the year 1846:

The Civilian and Galveston Gazette, 1838-1862.

Houston Morning Star, 1839-1850.

Galveston Weekly News, 1843-1893.

Telegraph and Texas Register, 1835-1846 (Houston).

Northern Standard, 1842-1888 (Clarksville).

Weekly Dispatch, 1843-1846 (Matagorda).

Red Lander, 1841-1847 (San Augustine).

National Register, 1844-1846 (Washington).

LaGrange Intelligencer, 1844-1847.

The fact that some of these papers were short-lived may be seen from their dates of publication. A. C. Gray in *History of the Texas Press*, Wooten, Dudley G. (Editor), II, p. 384 lists only six papers started in Texas prior to 1845 that lived through the era and into the decade beginning with 1850. These are the *Telegraph*, *Morning Star*, the *Civilian*, *Galveston News*, the *Red Lander* and the *Standard*.

of attempted publications under Mexican rule, like Benjamin Harris's *Publick Occurrences*, were censored and suppressed.

Why was the death-rate so high when the population was so eager for information? The answer in part may be found in the social and economic conditions of the frontier communities which presented almost insurmountable hazards to the publishing business. Shortages were multitudinous in almost every field of operation—lack of operating capital, of skilled printers, of paper and ink, and even of news. The poor transportation facilities worked against the newspapers in two ways: incoming news failed to reach the paper and subscribers often failed to get their copies. Skirmishes with Indians and battles with Mexicans often disrupted or stopped publication.

Another reason why newspapers could not be made going concerns was the fact that more papers kept springing up than the communities could support. Our early emigrant's astonishment that so small a population could sustain so many papers was shrewd overstatement. Many towns were newspaper poor. Galveston's 1,000 inhabitants in 1839 supported three newspapers; Houston, with a few more than 1,000 people shortly after 1840, boasted five newspapers including a daily. A few hundred subscribers in Austin in 1841 were receiving three local newspapers each week. A publisher who counted 200 to 400 paying subscribers considered himself doing well.

Though expenses of publication in comparison to expected revenue were not great, many of the publishers found it extremely difficult to make ends meet financially. A comparison of income with expenses of the best-known weekly paper is given by Gail Borden, Jr., revolutionary publisher, in a letter to Stephen F. Austin. He quoted his operating expenses to be in excess of \$250 per month while he took in only \$75. Later he was able to report a profit after achieving 700 subscribers after surmounting "great difficulties."

Publishers had as much trouble collecting balances due

as they did in getting new business. Past due bills were a most frequent and universal complaint. Publisher Charles DeMorse of the *Northern Standard* at Clarksville advertised he would accept beeswax as legal tender for subscriptions. Taking farm products in lieu of a year's subscription, a practice still in use, was customary. Unless payment for subscriptions arrived, empty-handed editors would not hesitate to remind readers of their "dire straits." During his first six months of publication he barely received enough money to buy food, and his printers had to borrow funds to continue, DeMorse confided to his readers.

"Those residents of Fannin and Lamar, who are indebted to us for subscriptions and advertising," DeMorse warned one time, "are informed that we shall attend District Court in those Counties for the express purpose of collecting little amounts due us."

The *Richmond Telescope* publisher was disappointed because he could not afford the literary paper he had planned. An early issue of the *Telegraph* and *Texas Register* remarked: "We frequently hear of persons complaining of not receiving papers which they had ordered. . . . The reason for our non-compliance, is the neglect on their part to accord with the terms of our paper, marked at the head—'payment in advance.'"

The scarcity of good printers was another difficulty which harrassed the trade. In one-man printing establishments service depended solely on the continued well-being and health of the compositor. Reason pled for a delayed edition of the *Matagorda Bulletin* in 1838 was illness of the type-setter. The *Colorado Gazette and Advertiser*, also at Matagorda, missed two weeks in 1839. Somewhat abashed, it explained in the September 28 issue: "We are under the necessity of apologizing to our patrons for the non-appearance of our paper for the last two weeks. Mr. Atwell, the publisher, (and our only compositor) accidentally fell through a trap door, from the second story of a building, which injured him so seriously as to disable him from attending to business within the last few days."

Similarly, the Clarksville *Standard* of October 15, 1842, apologized: "On account of the indisposition of the two journeymen employed in this office we were unable to get out the paper last week; but as all hands are now well, we shall now go ahead." "Want of hands" also held up the *Telegraph* for three weeks in 1836.

Lack of newsprint and ink delayed or suspended publication more often than the indisposition of printers. The supply shortage was so common and widespread that it caused omissions in almost every volume of every early Texas newspaper. The most resourceful publisher did not escape. No matter how far ahead of time he placed his orders, he was certain at one time or another to run low. When this happened he cut down the number of pages, and at times he was forced to stop publication. Most of the trouble was due to poor transportation.

The *Telegraph* stated that paper ordered in September, 1835, did not arrive until February, 1836. The "Belle of the Red River" took ten weeks to ply from New Orleans, thus holding up the *Northern Standard* for nine weeks. Most of the paper came by boat from Boston to New Orleans to Galveston, then inland by wagon train.

The *Austin City Gazette* explained after two weeks suspension, "We have five wagons at present loaded with paper, materials, and another press, on their way up; a part of them have already been twenty-seven days from Houston." (December 25, 1839). Supplies due the San Augustine *Red Lander* by boat up the Red River were delayed once because the river was too low for navigation.

The shortage of ink caused the editor of the *Red Lander* to suspend publication from December 18 until January 1, 1845. "The Christmas holidays come but once a year," he wrote, "and we are the more willing to avail ourselves of a little relaxation at the present time, as our printing ink has all been 'used up,' and the bad roads have prevented a new supply reaching us. We have brought out the present number with ink of our own making; and if our subscribers will

excuse its indifferent appearance, we shall make amends in the succeeding numbers."

Undependable transportation not only interfered with regular publication, but it also held up delivery of papers to subscribers. The *Telegraph* editor in 1836 with regret informed his subscribers at Brazoria, Velasco, and Quintana that their papers had been forwarded by a gentleman who omitted delivering them, but took them with him to New Orleans. In an effort to gain timeliness, offsetting in a measure time lost by slow mail deliveries, editors followed the practice of setting their publication date on the day mail left town. If the mail date changed, so did the date of publication.

On the other hand, uncertain postal deliveries seriously cut off the source of news—the life-line vital to every newspaper. All editors depended upon their mail, particularly from correspondents, and other newspapers, for valuable news. Once the *Northern Standard* failed to receive its mail, explaining, "We present our readers this time a paper but not a newspaper. We have been water locked for the last week and are without exchange papers from any direction." (December 2, 1843).

Some indication of the snail-pace communication system is reflected in the *Red Lander* of March, 1846, when the editors complained bitterly of their difficulty in getting election returns. "We had hoped that we should be able to publish a full list of the members of the Senate and house of representatives at least in a month after the legislature had convened, but in this we have been disappointed. We have made the most strenuous efforts ever since the election came off, to obtain the correct returns, and give the names of the members elected to the legislature; and now after that body has been in session nearly a month, we find ourselves minus the names of the members of Lamar, Brazoria and Milam counties. We will supply the deficiency as soon as we ascertain who the members are."

Disruption of publication by Mexican invasions or In-

dian skirmishes also threatened the publishing business. *The Colorado Gazette and Advertiser*, after missing an issue, said on June 5, 1841: "We were prevented from getting out the *Colorado Gazette* last week by the Indian news, which induced the compositor and ourself to join the company that left this town for the west. Our readers, we know will excuse us; for under the circumstances it was but our duty to disappoint them."

Instead of abandoning his paper to go out to meet the enemy, Gail Borden with the *Telegraph* pulled up stakes at San Felipe in 1836 and fled before Santa Anna's invading Army. To advance the revolutionary cause with his publishing efforts, he moved his press to Harrisburg, temporary seat of the government, where on April 14, Mexican troops again overtook them. This time it was too late to get away. Mexicans seized the press in the midst of running off an edition, and sank it in the Bayou. Undaunted, Borden with new equipment was publishing the *Telegraph* at Columbia the following August.

The *Austin City Gazette* ceased publication for a few months in 1842 because Mexican raiding parties threatening a second invasion caused the removal of the capitol from Austin. However, the paper opened again for business with the return of the government to Austin.

"Pie-ing" of type is referred to several times in the stories of early print-shop hardships.

The *Telegraph's* type was pied, according to one account, when the paper first moved to Houston, at that time a sprawling village of tents and temporary structures. The publisher opened shop in the only place he could find, a dilapidated old building. One day part of the roof fell in, upsetting a table and pieing the type of an issue that was being made up for the press.

Another story whose doubtful ring detracts little from its appeal also concerns the *Telegraph*. It relates an experience of Dr. Francis Moore and Jacob Cruger, successors to Borden on the paper. The new publishers captured a

young cub which they kept as a pet until he grew up. The story, as told by A. B. Norton, in his *History of Journalism in Texas*, goes on:

"He (the bear) became quite mischievous, and very troublesome at times. . . . On one occasion, after the paper had been made up and the printers gone to their dinner, he got loose, concluded that he would go on with their work, and accordingly gathered up the forms in his strong embrace and carried them to the press, where he pried them, delaying that week's issue. This is the first bear we have any account of in a Texas printing office."

Many of the same hardships were encountered in other business enterprises of the Republic and hence were not confined to journalism. But the press, ever a mirror of the life and times of a given country and era, reflected as truthfully in its performance as in its columns. In the face of such problems, the press's record during the Republic was indeed creditable. It laid the foundation for more stable and therefore serviceable journalism during the period of early statehood which followed.

The papers of 100 years ago followed a common pattern in make-up, organization, and content. Neatly printed on rag paper, they varied in size from two to six columns to the page and from two to eight pages. They carried classified advertising which often was displayed on the front page. There were no headlines. The news, printed and displayed continuously from left-hand column to right, was classified generally according to its source; namely, foreign, news from surrounding towns of the Republic, and purely local news.

They printed official communications, quotations from other newspapers, editorials usually concerning the political future of the Republic, and filler material, such as poems, fiction, and quotations.

Editorially the papers proclaimed the virtues of the new country—its soil, climate, and its people. Settlers from the states were invited. Large advertisements heralded the

opening of new towns. Editors were staunchly independent on political questions. They did what they could to keep down gambling and vices detrimental to the community morals as a whole, motivated by honest community spirit. They tried to make the country live up to the standards they had claimed for it.

BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER X

SOLICITOR FOR THE SANTA FE

On October 1, 1875, the body of Cruz Vega was found dangling from a telegraph pole about a mile and a half north of Cimarron. A strangling lariat about his neck and other evidences were mute testimony of a gruesome lynching. Clusters of hair torn from the scalp and other signs of torture were manifest.

Bit by bit the story of the murder was pieced together, implicating a Methodist minister, the Rev. Oscar P. McMains, among those responsible for Cruz's death. McMains was arrested and brought to trial in the Mora county district court before Judge Henry L. Waldo, who had been appointed as chief justice upon Judge Palen's death. Trial was had on a change of venue from Colfax county on August 23 and 24, 1877. McMains became involved by being overzealous in his efforts to ferret out the assassins of a fellow clergyman, the Rev. F. J. Tolby, who had been murdered in Colfax county in 1875. Suspicion pointed toward Vega as being implicated in the Tolby murder.

McMains made his mistake in influencing one William Low, later the principal witness at the McMains trial, with the hope of taking a \$500 reward offered by Governor Samuel B. Axtell, and additional sums offered by other parties, for information leading to the apprehension of the murderers of the clergyman. McMains arranged for Low to decoy Vega into the hands of an armed party for the purpose of having Vega make a confession. The party, however, became intoxicated and McMains lost control over them. After extorting a confession from Vega by hoisting him up and down the telegraph pole with a rope, instead of handing him over to the officers of the law, as McMains had directed, they decided to finish him off, and killed him then and there.

At the conclusion of McMains' trial, the jury returned its verdict holding the defendant guilty in the fifth degree and assessing his penalty at three hundred dollars. Chief Justice Waldo, who presided, noticed that the jury's verdict failed to state of what the defendant had been found guilty, and based upon this technicality, set it aside. A new trial was ordered to be held at Taos, but the case eventually was dismissed by Judge Samuel Parks on April 1, 1878.

At the time Judge Waldo became chief justice, a virtual reign of terror, of which the Vega murder was but one episode, paralyzed the respectable citizenry of the Territory with fear of their lives. Even in Santa Fe within a period of a few weeks three shocking murders and near murders were reported within or near the plaza.

Early in June, 1876, two individuals met in the square during one of the busiest times of day and became involved in a heated shooting affray, one wielding a large revolving pistol and the other a repeating rifle, their wildly flying bullets endangering scores of people in the vicinity.

On Sunday, June 25, gray-haired and crippled Dr. J. P. Courtier, one of Santa Fe's eldest and respected citizens, was kicked and beaten to death by four young hoodlums, later identified as Ramon Winter, Juan Benevidas, Crespín Gallegos and Jose Pais, while he was asleep in his home within a stone's throw from the plaza. There was absolutely no cause or provocation for this ghastly midnight assassination. After the murder, the quartet robbed their victim, skulked away and dispersed, at least one of them using his share of the loot by proceeding to the house of a prostitute to seek gratification for his beastly lust, using the slain man's money as the pay-off.

On the evening of July Fourth a pretty young lady, Miss Mary Francisquita Montoya, while celebrating in the Plaza, was shot through the brain by a young chap named Daniel Mitchell who, during a spell of drunken hilarity, pulled a pistol from underneath his coat and started firing into space.

When opening his July term of district court in Santa Fe county in 1876, Judge Waldo made a masterly charge to

the grand jury in which he demanded in forceful language prompt and energetic action on their part to clean up this outlawry in the Territory. He said among other things:

Assassination after assassination has been occurring with startling frequency and rapidity; shootings and cuttings take place around us with the most impudent and outrageous defiance of law; one of our wisest and most valuable statutes, that against the carrying of deadly weapons in settlements or plazas, remains practically a dead letter, is violated daily and hourly and in numberless instances. Yet in all these cases there is scarcely a conviction had or a penalty inflicted; or if so, the punishment imposed by weak and loose-minded jurors, has not been at all commensurate with the enormity of the offenses.¹

The reason for all this outlawry, continued Judge Waldo,

is because the laws are not enforced! Because there is a total failure in the performance of their duty by those who are required to aid in executing the laws! An entire want of efficiency in the administration of justice in this Territory! Crime witnesses the failure of justice and plumes itself upon an almost absolute immunity from punishment. . . . The evil being so manifest, efforts for its correction and removal should be at once made. The remedy is at hand. It needs but the resolution to apply it. It is to be found in a prompt and vigorous execution of the laws. Let courts and people unite to this end. Let it be understood that crime henceforth is to be punished, and punished severely.

Judge Waldo's plea to the grand jury did not go unheeded. Numerous murder indictments were returned. Such an improvement, in fact, in returning indictments against the culprits could be noted that Judge Waldo made it a point to congratulate the grand jury, considering their conduct as an example to the grand juries throughout the Territory. He concluded his remarks by expressing the hope "that their action so prompt, so rigorous and so thorough was the inauguration of a change for the better and the beginning of a period characterized by a reign of law, peace and order."²

Though some convictions finally resulted from these indictments, no doubt in far too many cases the defendants were acquitted, and in those cases where convictions were

1. *Daily New Mexican*, July 12, 1876.

2. *Daily New Mexican*, July 24, 1876.

obtained the punishment was too lenient and not commensurate with the crime of which they were found guilty.

Three of the young men accused of murdering Dr. Courtier were brought to trial before Judge Waldo on February 22, 1877. After examination of the witnesses for the prosecution had been completed, it appeared that no testimony had been adduced implicating Jose Pais so he was discharged and the trial continued against Benevidas and Gallegos. After what appears to have been a very fair trial the jury rendered a verdict of guilty, specifying the punishment in the verdict—one year imprisonment in the county jail! This meager retribution, together with similar laxity in other cases in which convictions were had during the term, brought the following comment from a *New Mexican* editorial writer:

The result of these jury trials did not meet the expectation of those who believe that the crime of murder should be punished by death. Either those who make up juries are becoming very lenient in their notions of crime, or the character of our laws make it very difficult to convict.³

A more vehement denunciation of these easy-going criminal prosecutions appeared in a letter to the newspaper concerning the Courtier case:

[The case] brings prominently into view the utter failure or rather farce of trial by jury as it obtains in New Mexico. There was never a more cruel or heartless murder. [Here follows a recitation of the gruesome details of the assassination]. Can any language adequately express the fiendish atrocity of such actions; Yes, the two who alone received even the semblance of punishment will in less than a year be turned loose upon society. The verdict in this case was an outrage upon common sense, and an insult into the face of the whole American population. There could be no doubt that a barbarous murder had been committed and the only question was whether these men were guilty of it or not. The jury by their verdict decided that they were so guilty, and at the same time expressed their belief that one year's imprisonment in the county jail was a sufficient punishment for the murder of an American.

There can be but little doubt the result of this trial will be to still further encourage criminals and for this the jury are directly respon-

3. *Santa Fe* (Daily) *New Mexican*, Feb. 26, 1877.

sible and ought to be made accessorys [accessories] before the fact, for every crime resulting from their betrayal of the solemn duty entrusted to them.⁴

Developments in the murder case against Daniel Mitchell for the death of Francisquita Montoya took an even more surprising and unusual turn. Attorney General William Breeden, who was prosecuting the action against Mitchell for the Territory, had encountered some difficulty in making up a presentable case in view of the fact that the shooting had taken place while the defendant was under the influence of liquor and because the bullet which struck and killed the young lady had been fired at random and without intent that it should kill or injure anyone.

Mitchell's father, who lived in the East, hurried to New Mexico as soon as he learned of the tragedy and at once went about to build up sympathy for his delinquent son. His efforts were so successful that, as the trial was about to start, the mother and a brother of the slain girl wrote a letter to Governor Axtell seeking discontinuance of further proceedings against the young man. The letter explained that they were making this request because their

holy Catholic religion commands us to pardon notwithstanding the resentment that from time to time wells up from our hearts, on the other hand we could not resist the supplications of Mr. Mitchell, the good father of this unfortunate young man, who has made a long and expensive trip to come here, nor the supplications of his tender mother who from the day she knew of the terrible mishap has been prostrated in profound grief.⁵

Acting upon this prayer from the grief stricken mother and brother of the innocent victim of Mitchell's misdeed, Governor Axtell granted the desired pardon and Attorney General Breeden promptly issued a *nolle prosequi*, whereupon the Mitchells, father and son, made a quick exit from the Territory to their home in the East, rejoicing.

The unexpected pardon by the governor created considerable interest throughout the Territory. In legal circles

4. *Santa Fe (Daily) New Mexican*, March 12, 1877.

5. *Daily New Mexican*, Feb. 14, 1877.

the question immediately asked was whether the pardoning power could be lawfully exercised before conviction. The governor, apparently acting upon the advice of Attorney General Breeden, gave as his authority a quotation from Tomlins' *Law Dictionary* which stated:

It is laid down in general that the King may pardon any offense, so far as the public is concerned in it, after it is over, consequently may prevent a popular action on a statute by pardoning the offense before the suit is commenced.⁶

Since our law is based upon the English it was concluded that, substituting "Governor" for "King," the governor acted within his legal authority in granting the pardon, even though the trial had scarcely begun.

The executive's action met with considerable criticism from those circles in the Territory which were seeking to tighten up convictions and punishment of those responsible for the rampant lawlessness prevailing. A person writing to the *Daily New Mexican* under the name of "Galax" sharply censured the governor for his action, actuated as he saw it simply because of the petition from the victim's kinsfolk. The obligation to mete out punishment goes further, he contended, than merely furnishing a measure of consolation to the bereaved mother and brother; it extends to society and to the citizenry as a whole. "This man," the correspondent said, "committed a three-fold offence, he was drunk and disorderly, he was guilty of carrying a concealed weapon, and he committed murder. There would appear to be no extenuating circumstances."⁷

Governor Axtell promptly replied to this criticism, directing attention to the fact that he felt his action was justified on legal principles, saying:

The facts are that he [Mitchell] fired his pistol in the air without the intention of hitting any person or of doing any injury to anything whatever, there was an entire absence of motive, intention, forethought or malice.⁸

6. Thomas E. Tomlins, *Law Dictionary* (Philadelphia, 1836), vol. 3, p. 10.

7. *Daily New Mexican*, March 12, 1877.

8. *Daily New Mexican*, March 13, 1877.

In 1878 Judge Waldo resigned from the court and resumed the active practice of law, forming a partnership with William Breeden. Shortly after his resignation Governor Axtell appointed him as attorney general for the Territory to succeed Mr. Breeden who had resigned. In representing the Territory in the courts Judge Waldo was eminently successful.

When Lew Wallace took over the executive's chair from Governor Axtell, he entered upon a policy of cleaning up outlawry in the Territory. Some of his methods of doing so, unfortunately, did not coincide with Judge Waldo's keen sense of justice. Governor Wallace favored prosecution of the military commander of Fort Stanton for an unwarranted use of troops in quelling disturbances in Lincoln county. Judge Waldo disapproved, declined to prosecute and, as a matter of fact, turned up as counsel for the defense before the court of inquiry which had been requested by the accused officer. This embittered the governor and he appointed Eugene A. Fiske to succeed Judge Waldo as attorney general on February 14, 1880.

An interesting legal controversy resulted. Resignation of William Breeden as attorney general and subsequent appointment of Judge Waldo in 1878 had taken place after adjournment of the legislature of that year, thus precluding confirmation by the legislative council. The council in 1880 had adjourned on February 13 without, of course, confirming the new appointment of Attorney Fiske. The district court was asked to decide between three alternatives presented to it by the arguments of counsel:

(1) That the governor, alone, had power to appoint Mr. Fiske to fill the vacancy created by the expiration of the term of Judge Waldo who had not been confirmed as required, and that, therefore, Mr. Fiske was now the attorney general.

(2) That the governor had no power to appoint without the advice and consent of the council, except to fill vacancies resulting from death or resignation, and consequently, since there had been neither death nor resignation, the gov-

ernor could not make an appointment, so that under the circumstances Judge Waldo, as the last incumbent, "held over" until an appointment was legally made and his successor qualified.

(3) That the governor had no power to appoint under the circumstances, but that Judge Waldo's term was absolutely limited by statute and had expired; consequently a vacancy existed.

Judge Waldo's appointment had been made under terms of Sec. 1858 of the U. S. Revised Statutes which provided:

In any of the territories whenever a vacancy happens from resignation or death during the recess of the legislative council in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Chief Justice Prince wrote an extensive opinion in the district court, which held:

(1) That the governor had no authority to make any appointment to the office of attorney general without concurrence of the council, except to fill vacancies occurring during the recess of the legislative council from resignation or death; and the present circumstances not falling within either of these limitations, the governor did not have the power to make the appointment of Mr. Fiske on February 14.

(2) That the term of Judge Waldo expired with the end of the session of the legislative council on the night of February 13 and that he did not hold over because of Mr. Fiske's failure to qualify.

(3) That a vacancy existed in the office of attorney general which could only be filled by the governor plus confirmation of the council.⁹

The controversy between Judge Waldo and Mr. Fiske again bobbed up in the case of *New Mexico v. Stokes and Mullen*, 2 N. M. 63. This was a prosecution for burglary and both Judge Waldo and Mr. Fiske presented themselves, each

9. *In re Matter of the Attorney General*, 2 N. M. 49.

claiming the right to appear as attorney general and to be recognized by the court as such. Justice Bristol in upholding the views of Chief Justice Prince brought out that the governor had on three occasions sought to appoint Mr. Fiske and that the council had twice rejected the appointment and then had adjourned before it had taken action on the third nomination.

Nevertheless, the duties of the attorney general had to be taken care of by someone, so the Court appointed William Breeden, the former incumbent, to carry out certain essential duties for the court. Mr. Fiske then stepped in and claimed that he was entitled to recover the fees and compensation received by Breeden for the services which were usually performed by the attorney general. Judge Bristol, however, in a summary opinion held that since there was a vacancy in the office of attorney general, Mr. Fiske had no claim to the fees which Breeden had received as an officer of the court. The vacancy was finally filled on June 22, 1881, when Governor Lionel A. Sheldon reappointed Mr. Breeden to the office.

In 1883, when the legal department of the Santa Fe Railroad company was systematized, Judge Waldo was appointed the company's solicitor for New Mexico. It was in this capacity that he had his greatest influence and rendered his greatest service to the Territory. Having charge of all the legal business of the railroad in New Mexico, he gave up his private practice and dissolved his partnership with Breeden in 1883.

Though he was charged with the safety of great corporate interests and though he never was a member of the legislature, Judge Waldo was author of much of the finest legislation that appeared upon the territorial statute books and was responsible for the defeat of many vicious and dangerous proposals. Though a Democrat in politics he was a friend of the leaders of both parties and was a fearless advocate of what he thought was for the best. He was fully as aggressive in opposing that which he felt was injurious or improper.

When Santa Fe railroad engineers determined that it was physically and practically impossible to route the main line of the railroad through Santa Fe as it had been hoped and planned, it was Henry L. Waldo who, because of his confidential and personal relations with William B. Strong, president of the railroad, and with a certain amount of support from business men of the community, persuaded the officials of the company to build the branch line from Lamy to Santa Fe. It was not the business men of Santa Fe, as has been so often said, who thwarted construction of the main line through the city. If it had not been for Judge Waldo's efforts in lining up community support for the branch line and using his persuasive powers with the railroad officials, Santa Fe would have been devoid of even this connection.

Illustrative of Judge Waldo's attitude toward questionable legislation, even that which might temporarily benefit the railroad, was his attitude toward the so-called Hawkins bill which was enacted by the thirty-fifth legislative assembly and appears as Chapter 33, Laws of 1903. This bill provided that suits for damages for personal injuries sustained in New Mexico would be required to be brought in the courts of this Territory by the injured or aggrieved party. The reason back of this legislation, it has been said, was that a more friendly feeling existed in New Mexico toward the railroads, resulting in more favorable consideration on the part of juries.

Governor Otero vetoed the bill, bringing upon himself the bitter enmity of W. A. Hawkins, author of the bill, and of some of the New Mexico attorneys. But Judge Waldo, the solicitor for the railroad which, above all others, might be expected to benefit from the legislation, stood firmly behind the governor in his veto, saying that it was bills and methods of this sort which would hurt the railroads in the end.¹⁰ The bill was passed over the governor's veto on March 11, 1903, only to be annulled by Congress five years later.

10. M. A. Otero, *My nine years as Governor* (Albuquerque, University of New Mexico press, 1940), pp. 87-88.

CHAPTER XI

FASTIDIOUS JUSTICE

The task of replacing well-liked Henry L. Waldo as chief justice of the Supreme Court of New Mexico was difficult since, as the *New Mexican* lamented, for "integrity, ability, and perfect fairness" Judge Waldo was "the peer of any man who ever sat upon the bench in New Mexico."¹ The territorial legislature, after learning of Judge Waldo's resignation, memorialized the President of the United States directing his attention to the qualifications of R. H. Tompkins of Santa Fe, a resident of the territory for some thirty years. Tompkins had served as a justice of the peace. President Grant, however, named Charles McCandless, a member of the bar of Pennsylvania. McCandless came to New Mexico highly recommended and succeeded at once in obtaining the good will of the people of Santa Fe after his arrival early in the summer of 1878 to open a term of the district court.

After seeing the new judge in action for a week, the *New Mexican* commented editorially:

This territory from many peculiarities connected with its population and its property interests, requires the ablest of public officers, especially of judges. We need men of courage, of education, and of independent thought. . . . In [old and established] communities the public officer is merely an agent to carry out the public will, but in a new community on the frontier where society is in the forming stage, the official should be capable of moulding the opinions and leading the thoughts of men. He should eminently be a man of principle, and of courage to stand by his convictions. All of the qualifications we have mentioned appear to us to be found in Charles McCandless. . . . He is in the prime of his manhood and in the full vigor of his intellect.²

A fashionable, clean-cut appearing man, Judge McCandless created a favorable impression on all who attended opening of the term of court as he made his charge to the grand jury. His eloquent remarks began with these words:

For the first time in our lives we meet—you a grand jury doubtless of your native counties of New Mexico, and I from a far distant

1. *Santa Fe (Daily) New Mexican*, July 13, 1878.

2. *Weekly New Mexican*, July 20, 1878.

state of this Union, sent here under a commission from the President of the United States—each of us in our respective spheres to aid and assist in the administration of the laws of this Territory, it being but a part of our great common country, confederated, united and kept together for common protection of all the people within her vast domain.³

He pleaded for an unflinching effort on the part of all to exterminate vice and crime:

Let each one of us as judges, jurors and citizens resolve fearlessly and impartially to do our whole duty, and depend upon it, law and order *will* reign from one end of the Territory to the other, and lawlessness and violence will be suppressed and each citizen will be secure in the enjoyment of life, liberty and the pursuit of happiness.⁴

He complimented those of "Mexican" descent and praised them for their reputation of being honest, industrious, and law abiding. These characteristics, he maintained, made them great Americans and honest and intelligent jurors.

During July, at the conclusion of the session of district court in Santa Fe, Judge McCandless left for the east, ostensibly to visit his family who were still in Pennsylvania, thereafter to return with them to New Mexico. Ironically, the *New Mexican* bade him a happy journey and expressed the wishes of the community for his prompt return and a long and useful career in the Territory. Three months later, through a dispatch in the *St. Louis Globe Democrat*, Santa Fe learned of the resignation of McCandless. Commented the *New Mexican*:

A most unsatisfactory paragraph appears in the *St. Louis Globe Democrat* announcing the resignation of Chief Justice McCandless of the Supreme Court of New Mexico. We do no less than hope, although it be slight, that the statement is not true. While our personal knowledge of Judge McCandless is very limited, he having held only one term of court, that at Santa Fe, the last July term, our knowledge of him then and there gained, and the general satisfaction by him then given alike to both suitors and the bar, cannot help but make his resignation one of profound regret to every person who knew him. His promptness in the dispatch of business, his vigorous severing of tech-

3. *Weekly New Mexican*, July 13, 1878.

4. *Ibid.*

nical meshes which only too generally in the past have held the prosecution of the criminal calendar in its toils, his uniform courtesy, sturdy impartiality and familiar knowledge of law,—all contributed to make him respected in the highest degree. One official term of such a judge on the bench would have done much for New Mexico.⁵

Though a man of considerable ability, as Mr. Twitchell explains, McCandless was a man of too fastidious tastes for conditions in New Mexico at the time. That the judges of that day needed a rugged constitution, steady nerves, and a mind receptive to the crude language and the rough customs of the frontier is unquestioned. When the Hon. Benjamin Waters arrived in New Mexico a few years earlier he, like most of the judges who came out from the east, found himself quite unaccustomed to his new existence. During the first term of court which he held in the third judicial district, comprising the counties of Doña Ana, Grant and Lincoln, he traveled over 900 miles. A large portion of the route he had to follow from county seat to county seat lay through unsettled country, and was extremely unsafe for travelers because of its infestation with hostile Indians. For several days and nights of the journey the judge lived in the great outdoors, eating and sleeping in the open air.

To take the place of Judge McCandless, the President set out to find a man whose temperament would be likely to fit in with life in the frontier Territory.

CHAPTER XII

THE ACCELERATED COURT

After Judge McCandless failed him, President Rutherford B. Hayes appointed Lebaron Bradford Prince of New York State as chief justice of New Mexico. This choice proved very satisfactory because Prince tackled the rapid accumulation of court business with greater zeal than had ever been before displayed. His three years in office witnessed disposal within his district of 1,184 civil and 1,483 criminal cases as the result of prompt, speedy and vigorous trials. Though the volume of court business was steadily

5. *Weekly New Mexican*, Oct. 19, 1878.

increasing, and though Judge Prince's district covered more than half of the entire Territory, the judge successfully cleared his docket.

Prince studied law at Columbia where he developed an interest in politics, and he served as a delegate to New York State Republican conventions from 1866 to 1878. In 1871 he was elected, and later reelected again and again, as a Republican, to the New York legislature from a normally Democratic district. Prince served with marked ability, distinguishing himself especially by engineering the impeachment of dishonest judges from metropolitan New York as well as by obtaining certain much needed amendments to the New York state constitution in 1874. He was chairman of the Assembly judiciary committee when, by means of a memorial, proceedings were initiated against three New York City judges: George G. Barnard and Albert Cardozo of the New York City Supreme Court, and Judge McCunn of the Superior Court. In voluminous testimony taken, extensive corruption and political maneuvering were clearly apparent; attempts at bribery extended even to the ranks of the investigating committee and for a time this threatened the outcome of the inquiry. At least one member of the committee sought to thwart presentation of the group's report to the Assembly but failed in his effort. The legislative body went on record favoring impeachment. A court to conduct the proceedings consisted of the justices of the New York Court of Appeals, the lieutenant governor, and the members of the Senate. Prince was selected as one of nine members of the Assembly to present evidence against the impeached judges. Cardozo was saved from punishment by resigning before the proceedings were concluded, but Judges McCunn and Barnard were found guilty and removed from office.

In 1876 Prince was named delegate from New York to the Republican National Convention. Here he broke with Roscoe Conkling who, until this time, had been one of Prince's best friends and boosters. This break, it is reported, was one of the determining factors which led to Prince's

acceptance of the chief justiceship of the New Mexico Supreme Court.

In 1878 President Hayes offered the governorship of the Territory of Idaho to Prince who graciously declined the honor. The story goes that he developed a prejudice against the Territory when he called upon the congressional delegate from Idaho and found him slouched in his chair, his shoe-less feet and wool socks perched upon the desktop engulfing the room with their aroma. The New Mexico appointment came a few months later, in January, 1879. Prince didn't want that either, but reluctantly accepting, he arrived in Santa Fe during the first week of February. He quickly became so captivated with New Mexico that supplications which reached him from New York to resign and to return to his native state to run for representative or senator in Congress went unanswered. Instead, long articles in the New York papers under Prince's by-line extolled in glowing terms the virtues of the southwestern Territory.

Chief Justice Prince's term of office covered a transition period between the old backward condition of affairs and the new era of rapid progress and development. The change was due largely to the coming of the railroad. Criminal business in the courts was almost phenomenal, and the inflationary trend in prices and changes in business methods resulted in a welter of civil suits.

Judge Prince was well aware of how serious the criminal situation might become if resolute methods were not promptly adopted to curb the new threat. In charging the grand jury at the session of court which opened on August 6, 1879, in Las Vegas, he drew attention to the dangerous condition of affairs in the city. The railroad had brought "a crowd of rough characters, reckless of life and regardless of law,"¹ he observed, and then charged the jurors to do their whole duty in indicting such parties so the town wouldn't be completely over-run before winter. His observations were punctuated by the fact that only the evening

1. *Weekly New Mexican*, Aug. 23, 1879.

before this charge was given a man had been mortally wounded in a nearby saloon and no one had yet been arrested.

The speed with which the judge worked in dispatching court business is illustrated by a case which came before him during the first session which he held of the Mora county district court. On Friday morning of the week that court was in session, the grand jury brought in an indictment against Joe Felipe Gallegos for the murder of Sabino Lopez on August 9, 1878. Gallegos was immediately arrested and his trial went on in the afternoon of that same day. Mr. Thomas B. Catron prosecuted and a Mr. Lyden, who had just been admitted to the bar, was named to defend. The trial continued Friday night until nearly 11:30 o'clock and throughout the day Saturday. The jury returned a verdict of guilty of murder in the fourth degree Saturday evening. A sentence of seven years imprisonment, the highest penalty under the circumstances, was imposed. Thus the defendant was indicted, arrested, tried, convicted and sentenced, all within less than two days.

It may be doubted that this speed was always in the best interest of complete and impartial justice in individual cases, though it probably resulted in over-all, substantial justice being done. The judge was never harsh or severe in his treatment of counsel or litigants, and while he maintained long hours he did not unduly hurry anyone.

When Judge Prince was in the middle of his first session of court in Colfax county, a deputy sheriff by the name of Stokes was shot and killed and the sheriff, Peter Burleson, was wounded while bringing in an indicted customer for trial. Despite his eye for business, Judge Prince adjourned the court for one hour so that those who desired could attend the deputy's funeral.

The late Frank W. Clancy related that when the court was engaged in the trial of civil cases and some delay was asked on account of the unexpected failure of party, witness, or counsel to appear, Judge Prince, while acquiescing in the request, would tell the clerk to call the next case, and, impaneling another jury, would proceed with it while the jurors

in the first case waited in their seats.² At one term of court, which Mr. Clancy recalls in particular, the judge opened court every morning at eight o'clock, adjourned from 12 to one o'clock for dinner, and from six to seven for supper, and never stopped before 11 o'clock at night.³ Judge Prince did not debate questions of law with members of the bar during trials; he would instantly sustain or overrule any objection.

The trials at which Judge Prince presided often carried with them typical and exciting evidence of the western frontier. For example, a leading criminal trial during the Taos court term which opened on April 4, 1879, was the case of *Territory v. Joseph Holbrook*. The defendant had been accused of the murder of a noted outlaw by the name of David Crockett at Cimarron. Venue was changed to Taos county. Holbrook was a deputy sheriff who had shot Crockett while attempting his arrest in September, 1877. The trial took two and a half days, Frank Springer prosecuting for the attorney general. The evidence disclosed much interesting matter regarding the conditions in Cimarron during those troublous times. There was a narrative of Crockett's actions in riding his horse into hotels, stores and dining rooms, of forcing merchants to perform menial services and of stirring up his drinks with a revolver. The jury acquitted Holbrook, a fitting climax for the man who killed the colorful desperado.

A somewhat different but none the less picturesque trial was one held a few months later upon an indictment of five Laguna Indians, charged with stealing a flock of sheep. The sheep, testimony showed, had come wandering upon Laguna lands. Failing to locate their owner, the governor of the pueblo ordered five of his braves, including the lieutenant governor, Juan Chavez, to bring the animals into the village.

A dozen of the Indians appeared at the trial bedecked with full Indian costumes and laden with ornaments. A

2. Frank W. Clancy, "Reminiscences of territorial days," *Proceedings*, New Mexico Bar Association, 1919, p. 55.

3. Frank W. Clancy, "In Memory of L. Bradford Prince." (Historical Society of New Mexico, publication No. 25), p. 5.

novel feature of the trial was a complicated language problem which required double interpreting of every question and answer, first from English to Spanish and then from Spanish to the Laguna language, and vice versa. Colonel Sidney M. Barnes made a brilliant defense of the lieutenant governor who had been brought to trial first, but Judge Waldo as attorney general made one of the most eloquent addresses of his eventful career, carried the jury with him, and secured a conviction. Chief Justice Prince declined to grant the defense motion for a new trial, but imposed the lightest penalty possible, a fine of \$10.00, and Attorney General Waldo obligingly *nolle prosequed*⁴ the cases against the other four defendants.

At one of the first terms of court held by Judge Prince in Colfax county the courtroom was full of cattlemen when a big six-footer was arraigned on the charge of resisting an officer. He pleaded guilty. It appears from the facts that Peter Burleson, the sheriff, had started out to arrest the big fellow who was drunk and disorderly; although being a slow-moving individual from general appearances, the stalwart drunk was anything but sluggish when it came to situations of this kind and promptly made a pass toward his pistol. "Pete," however, accustomed to dealing with the rougher elements, was even faster and drilled the big man twice through the chest. Fortunately, the defendant had not been seriously injured and seemingly was fully recovered when he appeared in court. The judge asked him some questions with a view to obtaining information that would aid in fixing his punishment. Among other things the judge learned that he came from Texas. Why, the judge wanted to know, had the defendant left that beautiful state? The latter answered in typical Texas accent, "Well, jedge, I had reason ter believe a change of climate would be good for my health." To the judge's unsuspecting ears there was nothing wrong about this, but soon a burst of laughter from the cowmen rocked the courtroom, and the judge grasped the true

4. Made entry on the record that he would proceed no further with the prosecution.

significance of the remark—that lynching was not an uncommon pastime in the Lone Star State.

Judge Prince's reputation for making swift decisions is further illustrated by his action when Dr. John Symington brought suit against Jose B. Ortiz about 1881. The doctor had become exasperated at what he considered an unjustifiable repudiation by this defendant of a bill for medical services rendered to a third person at Ortiz' request. The case came to trial and the jury promptly returned a verdict for the defendant, though the evidence for the doctor was clear, direct and substantially uncontradicted. The judge asked, "Gentlemen, is this your verdict, in favor of the defendant?" And then, in response to an answer in the affirmative, with a moment's hesitation, he continued: "Gentlemen, you are discharged from the further consideration of this case, and your verdict is set aside and a new trial ordered."

An interesting question growing out of conditions peculiar to New Mexico reached the Supreme Court in the case of *Territory v. Romine*,⁵ in which Chief Justice Prince wrote the opinion. Richard Romine had been indicted for killing Patrick Rafferty with a hammer and was convicted of murder in the first degree. The jury which convicted the defendant was composed entirely of natives, none of whom understood English, and the proceedings had been conducted in English. Contact with the jurors, of course, was maintained through an interpreter. The instructions to the jury were written out in English but were orally interpreted to the jurors. On appeal the defendant contended that (1) a trial before a jury which didn't understand English was not a trial by jury as contemplated by the common law, or by the bill of rights, and (2) that the instructions to the jury were really given orally and were in violation of a law providing that such instructions should be in writing.

In answering these arguments Judge Prince pointed out that there was nothing in our law which makes the fact of

5. *Territory v. Romine*, 2 N. M. 114.

not understanding the English language a disqualification for a juror in the Territory or which gave to the defendant the right of being tried by jurors of any particular nationality or language group. He concluded that the defendant was sufficiently protected by the fact that the proceedings had been translated into Spanish by a sworn interpreter for the benefit of the Spanish speaking jurors. Counsel for defendant strenuously argued the second point on the theory that the purpose of having the instructions in writing was that the jurors might consult them while deliberating and that this intent was defeated by the oral translation. Judge Prince and his court deduced that the instructions were intended to be written in order that they might be filed with the papers in the cause for use in case of exception or on appeal. The court pointed out that at the time of the trial there was no authority for allowing the jury to take the judge's instructions with them when they retired for deliberation.

Although it would seem that every minute of the judge's time was occupied with his judicial duties in the busy first judicial district and with the business of the Supreme Court, within a year and a half after he became judge, Prince had prepared and published a compilation of all the laws of a general nature then in force in New Mexico. A story was circulated that he found the time to do this work on the train between Santa Fe and New York where he went between sessions of court.⁶ At that time it took about forty-eight hours to go from Santa Fe to Kansas City, and nearly as much more time to go from there to New York.

Though there appears to have been no serious criticism of Prince's compilation, which was the first since 1865, a new revision of the statutes was authorized in 1884. This, thinks Twitchell, was the result of some scheme on the part of certain leading members of the Santa Fe bar to discredit the judge who was regarded by them as an interloper and trespasser upon their long pre-empted political homestead.

6. Frank W. Clancy, *Address* (Historical Society of New Mexico, Publication no. 25), p. 6.

In 1882, prompted by his years in New York politics and probably by urgings of his eastern friends to return to New York to run for Congress, he conceived the idea that he might reasonably hope to gain the nomination for delegate to Congress from New Mexico. Believing, however, that there would be gross impropriety in seeking other and political office while occupying a judicial position, he resigned from office as judge in May, 1882, with the avowed purpose of seeking the Republican nomination for delegate to Congress.

The convention to make the nomination was held in Albuquerque and he was defeated by what his supporters believed to be unfair and dishonest tactics of the opposition. After the nomination had been made there was an assembly of his disappointed and angry supporters in an unfinished storeroom, north of Railroad Avenue, and there were many loud and vociferous appeals for him to run as an independent candidate. Listening until the storm had somewhat abated, he addressed them something like this:

No, gentlemen, I cannot do that; I am a Republican and believe in party organization, and to preserve that organization is of more importance than the gratification of any man's individual ambition. I cannot be an independent candidate.⁷

These calm words quieted his irate followers and the *junta* soon dispersed.

Two years later Prince was selected as the regular nominee of the convention, but Colonel William L. Ryner-son, defeated aspirant from the southern end of the state, bolted the party, ran as an independent candidate and defeated Prince's chances, the judge losing by a plurality of only about a thousand votes to the Democratic nominee.

In 1889, on April 2, President Benjamin Harrison called on Judge Prince to serve as governor of New Mexico. This appointment was not popular with a large section of the Republican party in New Mexico, though Prince was

7. Frank W. Clancy, *Address* (Historical Society of New Mexico, Publication No. 25), p. 8.

the favorite of most representative business men of the Territory as well as of powerful friends and advisers of the President in the East. Prince held the position for four years, until 1893, when the national administration swung over to the Democratic party.

During his administration as governor the New Mexico public school system was created by legislative action, the University of New Mexico was founded, and the Agricultural college and other educational institutions had their beginning. Animated also by his regard for the historical past, and by what seemed to him to be natural color and logic, he made his residence while governor in the Old Palace, and with the assistance of his gifted wife, Mary Catherine Beardsley Prince, made it the scene of social functions which have scarcely been equalled either before or since in New Mexico.

During his first year as governor, a constitutional convention formulated a fundamental law submitted to Congress for ratification, but unfortunately it was rejected at the polls by overwhelming majority. This was a deep disappointment to Prince, who had long been an exponent of statehood for New Mexico. At no time, however, did he quit trying to promote the statehood movement.

Early in 1888 a report was circulated in the East that the Mormons had taken control of affairs in New Mexico and an idea had gained prevalence that the Mexican population was "lawless, unintelligent, and unfitted for self-government," that unless there was a preponderance of "American" voters, there would be danger in statehood. Prince countered this hollow propaganda with a letter in the *New York Tribune*, April 17, 1888, retorting that the Mormon population was "utterly insignificant" and that the native people instead of being trouble makers were conservatives who helped to stabilize the restless Americans. The possession of this tranquil native element, Prince argued, gave New Mexico a special advantage over most other Territories as a self-governing area.

In his message to the Territorial legislature of 1892-3

Governor Prince said with reference to the statehood matter :

Our people are mainly the descendants of two great nations which insisted on the rights of the people in England under the Magna Carta, and drove the Moors out of Spain that self-government should reign there. They are the children of the patriots who fought for independence of the United States in 1776, and of Mexico from 1810 to 1821. Surely the sons of such sires must be capable of self-government.⁸

From the day Prince arrived in New Mexico to become chief justice he was a defender of the interests and the good name of its citizens of Spanish descent. He thoroughly appreciated their good traits, though at no time condoning the evil elements among them, and stirred in righteous indignation at unjust attacks which were made upon them by English-speaking persons both in New Mexico and in the East. In making his report as governor to the Secretary of the Interior in 1889, he emphasized that "the native population was, as a rule, law-abiding and respectful of authority, and was chargeable with but few crimes."

In 1909 Judge Prince was elected to the Territorial Council, thereby completing a round of responsibility to each of the three coordinate branches of the government. He succeeded during this time in securing creation of the Spanish-American Normal School at El Rito. For several years after its establishment he served as president of its governing board (1909-1912).

On November 20, 1920, as a lineal descendant of Governor Bradford on his mother's side, Prince was the honored speaker at the Tercentenary Mayflower celebration at Plymouth, Mass. He passed away at the place he was born, Flushing, Long Island, on December 8, 1922.

Paul A. F. Walter, like Prince a long-time president of the New Mexico Historical Society, summarizes the splendid character of Judge-Governor-Legislator Prince in these words :

8. Gov. L. Bradford Prince, *Message to the thirtieth legislative assembly of New Mexico*, Dec. 28, 1892 (Santa Fe, 1892), p. 10.

Governor Prince was of fine appearance, goodly stature, wore a full beard, was genial, hospitable, an entertaining conversationalist, tenacious in his views, and, although, often involved in acrimonious controversies, was even-tempered, self-controlled in debate, and skillful in overcoming open or undercover opposition.⁹

CHAPTER XIII

JUSTICE UNDER A HIGH SILK HAT

When Prince became governor he was succeeded as chief justice by Samuel Beach Axtell who in turn had already served New Mexico ably as governor. Axtell assumed his duties as chief justice in August, 1882.

Axtell was educated at Oberlin and Western Reserve colleges. After college he studied law and was admitted to the bar in Ohio. During 1843 he moved to Mt. Clemens, Michigan, but in 1851 the gold rush lured him to California where he engaged in gold mining by the practical "pick and shovel" method in an area which he later helped organize into Amador county. In 1854 he was elected district attorney of the new county and held the office six years. In 1860 he opened a law office in San Francisco. In 1867 he went to Congress as a Democrat from the first Congressional district and secured reelection two years later. He was the only Democrat in 1869 who voted to pay the national debt in coin. Soon thereafter he changed his political affiliation and for the remainder of his life was known as a staunch Republican.

President Ulysses S. Grant appointed him governor of Utah Territory in 1874, but the President asked him to take over the governorship of New Mexico the following year. He was inaugurated on July 30th. His administration as governor was highlighted by a distrust of new religious movements. These views on his part were at least partly responsible for frequent rumors and charges made during his administration that he was a Mormon bishop in disguise,

9. Paul A. F. Walter, "Ten Years Later," *NEW MEXICO HISTORICAL REVIEW*, vol. 7, p. 376.

one of whose principal aims was to defraud the Maxwell Land Grant crowd.

For some time a man named Donato Gasparri had sought to gain incorporation of the order of Jesuit Fathers in New Mexico. Gasparri's activities drew Governor Axtell's disfavor. In fact, his feeling towards this man almost became an obsession. When the legislature, despite his known opposition, passed an "Act to incorporate the society of Jesuit Fathers of New Mexico," he returned the measure with a veto message which, regardless of the merits of the controversy, will go down as one of the most stinging and fearless rebukes that has emanated from the pen of a New Mexico chief executive. The message follows:

To the Honorable Legislative Council of the Territory of New Mexico:

GENTLEMEN: I return to you with my objections "An act to incorporate the Jesuit Fathers of New Mexico."

For the purpose of obtaining for your information the best legal advice within my reach, I requested the attorney general of the Territory, Hon. William Breeden, to prepare a careful opinion upon the law in the case. This opinion I make part of my message and lay it in full before you. Attorney General Breeden says:

'The bill in my opinion is clearly in violation of the said law of the United States.'

This opinion I fully endorse, and if you pass the bill over General Breeden's opinion and my veto you will do so with your eyes open, in violation of your oaths of office and the laws of the United States. There are many other objections to the bill, a few only of which I will briefly notice.

It is difficult to decide whether the man who seeks to establish or the Society which he seeks to establish is the worse. Both are so bad you cannot decide between them. This Neopolitan adventurer, Gasparri, teaches publicly that his dogmas and assertions are superior to the statutes of the United States and the laws of the Territory. No doctrine or teaching can be more dangerous to good government than this, especially in New Mexico where the mass of the people are ignorant. He also by his writings and harangues endeavors to excite animosities and to stimulate the people toward those lawfully exercising legal authority over them to acts of violence. He comes here while the legislative assembly is in session and lobbies in the most brazen and shameless manner to defeat needed and wholesome laws, and to force through bills antagonistic to the laws of the United States.

Two years ago [i. e., during the January, 1876, legislative session]

he intruded into the lower house and remained within the bar and by the speaker's side till he forced the passage of this bill, but at that session it was defeated by an honest Legislative Council. He now presents himself again, and being fully informed that what he asks is contrary to the laws of the United States, urges you to violate your oaths and pass the bill.

The Society which he seeks to establish in New Mexico is worthy of just such a leader. It has been denounced time and again by the head of the Catholic church and justly expelled from the most enlightened countries of Europe.

But apart from the bad character of the Society and the dangerous character of its chief, the bill is especially objectionable because it does not require that the incorporators shall be citizens of the United States nor residents of New Mexico. The number who may hereafter associate with them is unlimited, and they might all be aliens and reside abroad. Again, the bill permits these people to own, free of taxation, an unlimited amount of property. They are permitted to own all kinds of real and personal estate, in all parts of the territory, and are not subject to any supervision by the legislature nor required to pay anything towards the support of the government. The provisions of the bill are contrary to public policy and in direct violation of the laws of the United States, and I cannot give my approval.

S. B. AXTELL,
Governor, N. M.¹

The controversy surrounding Jesuit activities in New Mexico continued to boil. Bitter denunciations of the government and its policies appeared in a Jesuit paper published at Las Vegas, and castigations equally caustic against the order emanated from leading secular papers. The January 18, 1878, *New Mexican* bears the following quotation from a Jesuit organ directed at Governor Axtell:

The most brilliant proof that the Mexicans are not as wicked and merciless as Your Excellency the Governor wished to represent them, is that the chief officer of the Territory may publicly insult its honor and religion and yet continue to live in peace. Our voice is not heard where we wish it to be, and for one reason only we regret it. We would wish to call the attention of the interested parties to the wise selection of those who must represent them in these lands, that they may not send in governors, who, in place of tightening more every day the bonds, which unite the two people, exert themselves in calling curses on the day on which they saw themselves united.

1. *Journal of the Legislative Council*, 1878 (Santa Fe, n. d.), pp. 42-44.

The governor had underestimated the strength of the supporters of the Jesuits' measure before the legislature, but not its legal implications. The Legislative Council promptly voted eleven to two in favor of the bill. The House likewise passed the measure over the governor's veto by a vote of eighteen to four. But the Congress of the United States disapproved the act on February 3, 1879,² it being one of the very few measures of the Territorial legislature annulled by Congress through direct legislation.

Squarely supporting the governor's legal objections to the measure, the act of Congress declared :

An act of the legislative assembly of the Territory of New Mexico entitled 'An act to incorporate the Society of Jesuit Fathers of New Mexico', which passed both houses of said legislative assembly on or about the eighteenth day of January, eighteen hundred and seventy-eight, over the veto of the governor of said Territory, being in violation of section eighteen hundred and eighty-nine of the Revised Statutes of the United States, which declares 'The legislative assemblies of the several Territories shall not grant private charters or especial privileges,' said bill being a grant of a private charter or act of incorporation, with the 'especial privileges' of an unlimited power to acquire, hold, and transfer all kinds of property, both real and personal, and the exemption from taxation of all the effects and property of said corporation, be and the same is hereby, disapproved and declared null and void.

Axtell made numerous enemies as a result of his strong convictions, though he at the same time acquired staunch supporters who later stood him in good stead. A substantial improvement in government in the Territory which inured to Governor Axtell's credit during his term as governor was abolition of the old Spanish prefect system of county government and inauguration of the present system of Boards of County Commissioners.

Lawlessness in the Territory reached a new high during Axtell's administration and repercussions reached the ears of President Hayes who finally removed him from office in 1878, on the ground of excessive partisanship in the Lin-

2. 20 U. S. Stats. at Large 280, ch. 41.

coln county troubles, and appointed General Lew Wallace as his successor.

After his removal, Governor Axtell continued active in Territorial affairs. When Chief Justice Prince resigned from the bench, Axtell was President Chester A. Arthur's choice for the Supreme Court position and he took office as chief justice in August, 1882. Having a keen sense of right and wrong, as he had already demonstrated as governor, Judge Axtell now likewise determined that justice should be done in his court, regardless of legal technicalities. Whenever he had the opportunity he endeavored to acquaint himself with the details of the case before it came to trial, and then, during the proceeding, he would devote all his efforts to bring out the merits of the case, regardless of legal procedure as it is ordinarily practiced, in order that right might prevail.

At the first term of court which Judge Axtell held, a young consumptive was charged with burglary by breaking into a store on San Francisco street in Santa Fe. The principal witness was an amateur detective, "one of the kind who obtains a star and a certificate of appointment for \$3.00."³ It appeared from the testimony that this detective had approached the young defendant and urged commission of the crime upon him, pointing out how easily it could be committed, and offering to become a partner in the enterprise. The young man, desperately hard up for cash, yielded to these temptations, and was "caught" in the act by the detective. An 1880 statute declared that in instructing a jury, the court "shall not comment upon the weight of the evidence."⁴ When it came time for Judge Axtell to instruct the jury, he spoke substantially as follows:

Now gentlemen, we come to the evidence of the witness Brown. [There is no describing the expression of contempt and disgust which appeared on the judge's patrician-like face as he said this]. This man Brown comes on the stand and tells you that he is a detective. I want

3. New Mexico Bar Association, *Minutes*, August 29-30, 1904 (Santa Fe, 1904), p. 49.

4. *Laws of New Mexico*, 1880, Chap. 6, Sec. 23, page 51.

to tell you, gentlemen, that detectives, as a class are scoundrels, entirely unworthy of belief, and this man Brown here, is the worst of the whole lot I have ever seen.⁵

The verdict reached by the jury was in direct opposition to Brown's testimony and the young consumptive was acquitted. Justice was done.

In another case which came to trial before Judge Axtell the defendant was a poor man whose farm was in jeopardy and who was not represented by attorney. Seeing that the case would surely go against him unless he did obtain legal counsel, Judge Axtell descended from the bench and began cross-examining, opening with the stinging remark that "it takes thirteen men to steal a poor boy's farm in New Mexico." On conclusion of the evidence, he instructed the jury to find a verdict in behalf of the defendant. When the foreman announced a disagreement, the judge discharged the jury, announced a verdict in behalf of the defendant, and warned the sheriff never again to permit a single one of the discharged veniremen to serve on a jury in San Miguel county.

Judge Axtell was fearless, at times almost ruthless, in his insistence that counsel see that right prevail. It is related that during the time William Breeden was attorney general, Judge Axtell made some very acrid remarks to the attorneys who had been addressing him. Breeden, matching the judge's forthrightness, rose, and looking the judge squarely in the eye, retorted: "Don't be too hard on the lawyers, your honor; you might be a lawyer yourself again sometime, you know."

The judge's courageous nature was well exemplified in another case, a criminal trial which was held before him in Las Vegas. So bitter was the feeling against him there that he had been warned that he would not leave the trial alive if he dared sit in the case. He opened the case promptly as scheduled, but took one precaution; he ordered the sheriff to search all of the court attendants, spectators and officers

5. Frank W. Clancy, "Reminiscences of territorial days," *Proceedings* (N. M. Bar Association, 1919), p. 54.

alike, before proceeding with the trial. Forty-two revolvers were piled before him on the table when the search was concluded, some of them being taken from the attorneys in the case. Each person who brought his weapon with him into the court room was fined ten dollars for contempt, and no signs of resistance were manifest when the fines were collected.

It took more, however, than stern measures by the court and vigilance of the law to suppress the rough and ready-with-a-pistol elements of a throbbing frontier settlement like Las Vegas. This was illustrated by the widely publicized placard which appeared posted on bill boards, on street corners and in saloons on the morning of March 24, 1882. It read:

NOTICE!

TO THIEVES, THUGS, FAKIRS
AND BUNKO - STEERERS,

among whom are

J. J. Harlin, alias Off Wheeler;
Saw Dust Charlie, Wm. Hedges,
Billy the Kid, Billy Mullin, Little
Jack, The Cutter, Pock-Marked
Kid, and about twenty others;

If found within the limits of
this city aften Ten O'Clock P. M.,
this night, you will be invited to
attend a Grand Neck-Tie Party.

The expense of which will be
borne by

100 SUBSTANTIAL CITIZENS.

When the ownership and right of possession of the Cañon del Agua mine in Santa Fe county was being contested before Judge Axtell in the First judicial district court, young Miguel A. Otero, later governor, Page B. Otero, his brother, R. W. Webb of Golden and later clerk of the district court in Santa Fe, attorney Francis Downs and William A. Vincent, later chief justice, were enjoined by the judge from entering upon the premises while the litigation was pending in his court. Acting upon the advice of counsel, however,

the parties disregarded the order and, though ranking among the Territory's most eminent citizens, they were incarcerated in the Santa Fe county jail. Imprisonment turned out to be a farce because their political friends, Don Romulo Martinez, sheriff of Santa Fe county, and Francisco Chavez, his deputy, gave them the run of the jail-house. The jail office became a reception room where the "internees" received their friends in luxury, until the judge concluded that it would be better punishment to let them free.

Just as in the district court over which he presided Judge Axtell insisted that substantial justice be done regardless of legal technicalities, just so he had absolutely no use for technical arguments on appeal. Milton J. Yarberry had been convicted of murder in the first degree. On appeal it was argued, among other things, that the indictment was fatally defective because it had been drawn in the name of the Territory instead of in the name of the United States, violation being of an act of Congress relative to the crime or murder rather than the Territorial law. Judge Axtell held that since the Territorial statute on the subject was entirely consistent with the Constitution and laws of the United States and since the Territorial law on the subject had been enacted entirely within the grant of power made to the Territory by Congress, the indictment was properly found in the name of the Territory.^{5a}

Judge Axtell, too, was adamant in seeing that "substantial justice" was done to a defendant whom he believed guilty of the offense charged. The story is told that at one time during his early service upon the bench, he sentenced one Francisco Villegos of San Miguel county for a term of forty years. Just prior to passing sentence he asked the defendant the customary question of whether he had anything to say. Villegos declined to answer. But following the decree Villegos stood up and said, "I now wish to say this sentence is unjust, and that I am not guilty of the charge." Judge Axtell then, according to this account, modified his sentence saying,

5a. *Territory v. Yarberry*, 2 N. M. 391.

"You are adding falsehood to the charge, and now I change the sentence just imposed to sixty years instead of forty."⁶ Villegos turned out to be a rather model prisoner and after studying the full details of the case, Governor Miguel A. Otero pardoned Villegos on Thanksgiving day, 1899.

Frequent charges were made against Judge Axtell with the authorities in Washington by his rather numerous critics. To counteract these complaints the Territorial legislature of 1884 passed a resolution denouncing the accusations against the judge as "malicious, scandalous and false." Nevertheless in May, 1885, after Grover Cleveland took up quarters in the White House, Judge Axtell deemed it wise to resign from the bench, fearing an impending presidential axe. But despite his retirement, the judge continued to make his impress on Territorial affairs for some time.

Judge Axtell was a colorful figure both in his habits and in his dress. He invariably wore a high silk hat, well befitting his high position on the bench. He was noted for his particular kindness and helpfulness to the younger members of the bar, and he frequently aided them in untangling themselves from the intricacies of legal logistics. After his retirement from the court, he conceived the idea of seeking nomination for probate judge of Santa Fe county for the purpose, as he said, of finding out just what the real sentiment of the general public outside of the lawyers was toward him. He secured the nomination and stumped the county. When he reached Golden he was sitting in the front seat of his carriage with several other candidates. The people as one man threw everything at them that was movable, doing considerable damage to the eggs and to the other objects pressed into service. The judge, however, appeared outwardly unmoved and made his address as scheduled. In the election he came out second best by some 600 votes, which gave him considerable spare time for the repair and reconstruction of several houses to which he held title in Santa Fe. He personally supervised and took care of all the operations,

6. M. A. Otero, *My nine years as Governor* (Albuquerque, University Press, 1940), pp. 103-104.

and it was a common sight to see the judge perched with his high silk hat upon the driver's seat hauling lumber and other building materials to his dwellings.

Judge Axtell's last services of public importance took place in 1890 when he appeared before the House committee on territories in Washington to promote statehood for New Mexico, and when he was elected and served as chairman of the Territorial Republican committee. The esteem in which he was held by the bench and bar was reflected by resolution of the Supreme Court on the occasion of the announcement of his death in New Jersey on Aug. 7, 1891. It said in part:

RESOLVED, that with profound sorrow this court has learned of the death of Judge Axtell, who during his service as chief justice of this court and his prior services as governor of this Territory endeared himself to the members of the bar and other citizens of the Territory by his sterling qualities, his high sense of justice, his ability, intelligence, amiability and honesty, and his zeal in the public service.⁷

CHAPTER XIV

BY FRAUD DEFRAUDED

Election of Democratic President Grover Cleveland foreshadowed a complete new slate of Supreme Court judges in 1885. Democratic leaders had their field day recommending leading men from among their midst for all of the important posts in the Territory, priding themselves in the slogan that appointees in-so-far as possible should be from the Territory of New Mexico. Territorial Delegate Antonio Joseph was the Washington spokesman for the New Mexicans. Through the influence of Judges H. L. Warren, Henry L. Waldo, W. T. Thornton, and other Democrats, youthful William A. Vincent was urgently recommended to the President for the presiding judgeship to succeed Chief Justice Axtell. Early in May, 1885, appointment of Mr. Vincent was formally announced.

Prior to opening his first term of the Supreme and dis-

⁷. New Mexico Bar Association, *Minutes*, August 29-30, 1904 (Santa Fe, 1904), p. 51.

trict courts, Chief Justice Vincent presided at the inauguration of Edmund G. Ross, the first Democratic governor of New Mexico in some twenty-five years. The inauguration was in many respects one of the most unusual though not the most elaborate of Territorial inaugurations. The exact date and time of arrival of the new governor had been kept very hush-hush. A small group of influential capital business men and Democrats were advised that the governor would arrive during the early morning hours of June 15, 1885. Chief Justice Vincent and a small committee went to Las Vegas to meet him, and impromptu plans were laid on the way to inaugurate the new governor immediately and to administer the oath of office precisely at sunrise, thereby symbolizing an era of prosperity for the Territory under the new administration. Even the old governor, Lionel A. Sheldon, was kept in the dark and was uprooted from his quarters in the Old Palace during the early morning hours. Excitement spread swiftly throughout the capital at news of the arrival. The *Santa Fe New Mexican* gives the following picturesque description of the early morning proceedings:

The democratic heralds were 'on the house tops' at an earlier hour than usual this morning. They didn't even wait until sunrise. The cannon strained their iron-bound throats; the dawn of day saw fifty American flags playing whip-lash in the fresh morning breeze; the 13th U. S. infantry band discoursed martial music 'neath the rich foliage in the city plaza, and a little Spartan band of half a hundred democrats and republicans, all aggressive young citizens imbued in the keenest sense with patriotic enthusiasm flocked in and out of the historic executive palace to welcome and congratulate Governor Edmund G. Ross, . . .

Even at good day break the plaza presented an animated and enthusiastic scene which thrilled the staidest of spectators. Rosy cheeked dawn had come and gone; grandly the god of day crept up from behind the snow-capped mountains in the east; the first warm rays glowed along the graceful curves of the range, and flashed down the sides of the picturesque Santa Fe cañon, tinting the broad, green leaves of laurel and spruce with silver and pink and gold. The cannon and the music ceased.

'Governor, the hour has arrived,' said Hon. Henry L. Waldo rising to his feet in the midst of the throng that had gathered in the

governor's parlor of the old palace. Governor Ross stepped to the center of the room, and the company assumed a dignified silence. The Hon. Chief Justice Vincent then stepped out beside and slightly in advance of Judge Waldo and in solemn and well measured words administered to Governor Ross the official oath of office.¹

Chief Justice Vincent created a good impression on the morning of June 29 when he made his appearance on the bench at Santa Fe where a large group of interested lawyers and others had gathered to have their first court room meeting with him. One observer commented that as the judge entered he "laid his silk hat aside, sat down in the great easy chair and took from under his arm a ponderous book, and laid it upon the table, all this he did just as easily and unconcerned as if he had worn the ermine for years."² The book, of course, was the 1884 compilation of the New Mexico laws.

In preparation for the term of court in Colfax county, Judge Vincent designated Stephen W. Dorsey, former U. S. senator from Arkansas and at the time in question residing in New Mexico, as a member of a five-man jury commission for Colfax county to select the names of grand and petit jurors.

Opening of vast new land areas in the West, particularly as the railroads and new highways gave access to new territory in the Southwest, brought charges of theft of vast areas of the public lands, and of perpetration of other land frauds upon the government which reached gigantic proportions. Though the charges and the indictments were many, actual convictions were almost nil, either because of a lack of positive proof or because of an unwillingness on the part of the jurors to convict. Among those actually found guilty of complicity in land frauds in New Mexico was Colonel Max Frost, register of the U. S. Land Office in Santa Fe. Frost, however, was given a new trial and was thereupon acquitted. Nevertheless, the effects of these charges were in many cases far reaching. Collectively, they were in a large measure responsible for eventual establishment of a Court of Priv-

1. *Santa Fe New Mexican*, June 15, 1885.

2. *Ibid.*, June 29, 1885.

ate Land Claims to try the titles and settle the claims to large sections of lands.

Among the selectees for the government's land grant prosecutions was Stephen W. Dorsey. The ex-senator from Arkansas had already acquired considerable notoriety throughout the nation, and particularly in Washington, D. C., for his supposed connection with the "Star Mail Route" frauds. Acquitted by a jury, he had thereafter moved into New Mexico and had started a large cattle ranch in Colfax county. The government, however, had kept close watch over Dorsey's activities and now suspected him of having acquired his extensive land holdings in the "Uno de Gato" grant area by illegal and fraudulent dealing. Specifically, it was charged that he had lined up "squads of henchmen" who availed themselves of the necessary forms under the pre-emption and homestead laws to acquire tracts of land which they in turn conveyed to Dorsey under a preconceived plan. Trial of Dorsey, if it developed, was scheduled to be had in the Territorial district court then presided over by the chief justice of the Territory.

On August 17, 1885, Chief Justice Vincent opened the San Miguel county term at Las Vegas. During his entire stay there he held court from 9 a. m. until 6 p. m. and, it was reported, he "accomplished more . . . than any other judge that has occupied the New Mexico bench."

While Judge Vincent was in Las Vegas rumors started that he already stood in bad with the administration. Articles appeared to this effect in eastern papers. On August 15, William M. Springer, who had been quoted as authority for some of this gossip, wrote from Ojo Caliente to the *Chicago Herald* in an effort to squelch the reports. Vincent's appointment, Springer insisted, was due to the efforts of the bar and to the delegate from New Mexico. "Three-fourths of the lawyers of the Territory, without regard to party asked the president to appoint him." Springer then added that "Judge Vincent has not 'gotten into trouble in his new place'" and that he was "giving entire satisfaction to the bar and people of New Mexico."

On October 14, however, while Judge Vincent was in Tierra Amarilla holding the regular term of the Rio Arriba county district court, President Cleveland suddenly suspended him. Upon receiving this unexpected news Vincent at once adjourned and came to Santa Fe. On October 21 he telegraphed the president in these words:

I earnestly protest against such summary action, without even a hearing, whereby my character is ruined forever, and appeal to your sense of manhood and justice for a hearing in order to show that I have been an upright judge.³

This appeal was unavailing so Vincent wired Attorney General W. H. Garland, asking permission to come at once to Washington to defend himself in the matter of the suspension. Garland wired back, "I have no permission to give, as your suspension by the president is absolute. Your successor will be appointed within a day or two."⁴

Judge Vincent's political misstep had been the appointment of Dorsey on the jury commission, which had been built up by a few of his enemies to a charge of great intimacy with the man. The deposed chief justice again appealed to the president, pointing out that his appointment of Dorsey had been made in entire good faith and had been decided upon only after consultation with Territorial Attorney General Breeden, Frank Springer and George W. Prichard, distinguished members of the New Mexico bar, and others. He sent to Washington a large bundle of papers to support his record while on the bench.

The charge of intimacy with Dorsey was manufactured from very thin cloth, and there appears to have been no ground other than that the chief justice had paid a visit to Dorsey's elegant ranch home upon the latter's general invitation which had been extended to a number of prominent citizens of the Territory. The occasion was an annual "winning and dining" party, a custom of long standing in New

3. *Santa Fe New Mexican*, Oct. 27, 1885.

4. William A. Keleher, *Maxwell Land Grant* (Santa Fe, Rydall Press. c1942), p. 135.

Mexico, and one which is still observed by leading ranchers throughout northern New Mexico.

Judge Vincent's appeals and those of his friends who did their best to intercede went unnoticed. It was subsequently disclosed that Vincent's removal had come about as a result of the political maneuverings of the Rev. O. P. McMains of Raton, bitter enemy of the Maxwell Land Grant people, who had worked through his brother-in-law, W. P. Fishback of Indianapolis, an intimate friend of the president.

Crushed by the turn of events Judge Vincent soon left the Territory, though the New Mexico bar had shown its confidence in him by electing him as the first president of their Association. He re-entered the practice of law in Chicago.⁵ President Cleveland later admitted that the charges which had been made against him were without foundation, and he sought to make amends for his mistake by offering him the position of chief justice of Montana in 1889. The appointment, however, was declined.

Because of Judge Vincent's unfortunate experience, the story was oftentimes told in the capital that as new judges were appointed and came to Santa Fe to take their oaths of office, they were given stern warning "against the seductive ways of that man Dorsey." Furthermore, they would be advised to take no chances with Territorial appointees, but to bring their own clerks out with them.

5. Illinois State Bar Association, *Reports, 1919*, pp. 110-111.

Notes and Documents

On the one-hundredth anniversary of its writing, a letter written by Alexander Brydie Dyer, Lieutenant of Ordnance, United States Army, to Dr. Robert Johnston of Richmond, Virginia, in regard to the Taos Rebellion of 1847, was given to the Historical Society of New Mexico. The donor wishes to remain anonymous. The foot notes compare some of the details of the letter with what Col. Sterling Price reported of the incident.¹ The remark that Governor Bent received word of trouble brewing in and around Taos from the priest at Don Fernando de Taos is interesting in view of uncertainty as to the degree to which Father Antonio Martínez may have been implicated in the conspiracy.

The date of Lt. Dyer's arrival in New Mexico is not known, but the context of his letter suggests that it was certainly before Kearny left for California in September, 1846. The donor of the letter supplies the following biographical data concerning the lieutenant:²

Born in Richmond, Virginia, January 10, 1815, he was appointed to the United States Military Academy from Missouri in 1833, graduating July 1, 1837, sixth in a class of fifty. On Graduation, A. B. Dyer was promoted to Second Lieutenant of Artillery. He immediately saw service in Florida and was transferred to the Ordnance Department at its organization in 1838. He was promoted to First Lieutenant in March, 1847, Captain March 3, 1853, Major March 3, 1863, and Brigadier General, Chief of Ordnance, September 12, 1864, until his death at Washington, D. C., May 20, 1874.

In his minor duties, as Chief of Ordnance of the Army invading New Mexico, as commander of various arsenals, and of the Springfield Armory where he improved and extended the machinery for manufacturing arms to supply

1. Col. Sterling Price's Report to the Adjutant General, in U. S. cong., 1st sess., executive documents, *Mexican War* (Washington: Wendell and Van Benthuysen, 1848), pp. 520-530.

2. Citing War Department, Adjutant General's Office, *General Order No. 43*. Washington, May 21, 1874.

the armies of the United States during the Civil War, and as a member of the Ordnance Board, he developed qualifications for the higher responsibilities of the Chief of Ordnance, to which he was appointed.

He won the brevet commissions of First Lieutenant "for gallant and meritorious conduct in the conflicts of Embudo and Taos, New Mexico"; of Captain "for gallant and meritorious conduct in the battle of Santa Cruz de Rosales, Mexico"; and of Major General, "for faithful, meritorious, and distinguished services in the Ordnance Department during the Rebellion." A. J. O. A.

Santa Fe, New Mexico
February 14, 1847

My Dear Friend,

Unless you have been for four months separated from your friends, and deprived of all communication with them, and the whole civilized world, you can form no conception of the intense pleasure with which I read your letter of the 26th of October, which was received a few days since, when I was in the midst of a fatiguing campaign, which is now happily and successfully ended. As the whole affair was sudden and unexpected to us, and will doubtless create some excitement in the States I will give you a detailed account of such facts as have come under my own personal observation, or as I know to be true. The entrance of our troops into this country without being in the least resisted, and the miserable and degraded state in which the lower class (comprising indeed nearly the whole population) was found, induced very many, and certainly Genl. Kearny, to think that the change of government which might, and should ameliorate their condition would be hailed by them with delight, and accordingly at first no fears were entertained that any effort would be made to subvert the newly established government. In full confidence, Genl. K. organized a civil government, appointed a governor & other public officers, promulgated a code of laws, and in the latter part of September started with a part of the Dragoons for California. He was soon followed by the Mormon battalion under the command of Capt. Cooke. Since his departure we have had no positive intelligence of him. All things went on quietly for some time after he left. Still it began to be apparent that the people generally were dissatisfied with the change. The clergy and wealthy class from motives of interest, and the *tiers etats* because degraded and ignorant as they were wholly under the influence of the other two classes, and were unable to appreciate the advantages to be derived by them from the

change. Many began to predict that an effort would be made to wrest the government from us. About the middle of December we received certain intelligence that the plot was formed and nearly ripe for execution, and that in its ramifications it extended far and wide. Some of the leaders fled & others were arrested. On the 1st of January we learned that our troops under Doniphan had defeated the Mexicans on the 25th of December near El Passo del Nortes, and we thought the victory, together with the discovery of the plot would nip it in the bud. Soon afterwards Governor Bent learned through the priest of Don Fernando de Taos that a spirit of disaffection prevailed generally throughout the Taos valley, and that the Pueblos, a warlike tribe of Indians, were ripe for rebellion.³ With a knowledge of these facts the Govr imprudently left here on the 14th of last month for Taos where he had resided at one time. About noon of the 20th we had a report that he was dead, and two hours afterwards it was rumored that he had been murdered. This was so sudden & unexpected that we could not realize or believe it. Before morning the naked truth was before us and we knew that he and a number of Americans had been murdered⁴ and that the enemy from 1500 to 2000 were marching towards this place. The Mexicans here were immediately disarmed and prohibited from leaving the city without permission from the Comdg. officer. The teamsters and other Americans were armed and organized into companies, all necessary arrangements having been made, on the 23rd 300 troops left this place under the command of Col. Price to meet the enemy and march to Taos (a large & fertile valley about 80 miles N. W. from this place).⁵ I applied to accompany the troops in some capacity and had the good fortune to be ordered to take the command of the artillery which consisted of 4 12-Pdr Mountain

3. B. M. Read (cf. esp. *Guerra México-Americana* and *Illustrated History of New Mexico*) thought Fr. Martinez guiltless of complicity; so also did Lic. Santiago Valdez (*La vida del presbitero Antonio José Martínez*; fragments [MS] in the Benjamin M. Read Collection, Historical Society of New Mexico). R. E. Twitchell in various works, B. E. Burton ("The Taos Rebellion," *Old Santa Fé*, I, pp. 176 ff.), and P. A. F. Walter ("The First Civil Government of New Mexico Under the Stars and Stripes," *NEW MEXICO HISTORICAL REVIEW*, VIII, pp. 98 ff.) held him guilty.

Stories vary as to how the conspiracy was first discovered. One is that it was told to Price by the wife of a conspirator—a mulatto girl (Connelly, W. E. [ed.]: *Doniphan's Expedition* [Topeka, Kans., n. p., 1907], p. 513); L. B. Prince (*Historical Sketches of New Mexico* [New York: Leggat Brothers, 1883], p. 163, n. 32) credits Agustín Durán. Walter (*op. cit.*, pp. 117-118) credits Donaciano Vigil. Twitchell (*The Leading Facts of New Mexico History*, II [Cedar Rapids, Ia.: The Torch Press, 1917], pp. 232-233, n. 168) and Sister Mary Loyola ("The American Occupation of New Mexico," *NEW MEXICO HISTORICAL REVIEW*, XIV, p. 163, n. 32) say that the notorious La Tules told Price.

4. Governor Charles Bent; Stephen Lee, sheriff; J. W. Leal, circuit attorney; Cornelio Vigil, prefect; Narcisco Beaubien, son of Carlos Beaubien, circuit judge; Pablo Jaramillo. Others were killed at Arroyo Hondo and at the Rio Colorado. Cf. Col. Sterling Price: *op. cit.*, p. 520.

5. Three hundred and fifty-three troops left, according to Col. Price, *Ibid.*, p. 521.

Howitzers. On the 2nd day, 25 miles from here at Canada, our advanced guard discovered the enemy in large force and we immediately prepared to attack them. When I entered the valley the enemy were all on the hills. I then estimated them at about 800. Those who saw them in the valley and who had a much better opportunity of forming a correct opinion as to their number placed it at not less than 1500. When the first opened by a discharge from the artillery, our ammunition & provision waggons were more than a mile in the rear and this being discovered by the enemy a considerable force went to cut them off and it became necessary for us to detach largely for their protection. For an hour and a half my battery was exposed to a heavy fire of small arms from two houses & surrounding walls at 180 and 200 yds distance and during the time I had six men wounded out of a command of twenty, and several others shot through the clothes. After the waggons were all brought up a charge was ordered and in a few minutes we had possession of the houses and three of my guns were established on a neighbouring hill. The 4th had been disabled in firing. The enemy were in rapid retreat to the more distant heights. By dark we had full possession of the town where we took up quarters for the night. The following morning some of the enemy were seen on the distant hills but they were so shy that it was impossible to get near them and thus ended the fight. Our loss was 2 killed and 8 wounded. That of the enemy not less than 36 killed and 50 wounded.⁶ We remained two days in the town where we took everything that our troop wanted and from what I saw I should think that the races of chickens and pigs has there become extinct. Before leaving Canada we sent to Santa Fe for a 6 pdr. Gun and an additional supply of ammunition, which was brought up by Capt. Burgwin 1st Dragoons, who joined us on the 28th. We then destroyed the grain, wood, and residence of Archiletti, one of the richest and most influential of the leaders.⁷ On the 29th our march was resumed and when near Embudo a very strong mountain pass we learned that the enemy was in wait for us. A halt was called and Capt. Burgwin ordered to march with 180 men and attack. In a short time we distinctly heard a rapid desultory firing. We were immediately all anxiety and expectation. We soon learned that the enemy was routed with a loss of 15 or so killed and more than 50 wounded.⁸ Our loss was 1 killed & 1 wounded. The next day's march was fatiguing one, over a mountainous country, the road being covered with 8 inches of unbroken snow. We camped without tents, water or forage for the animals. The following morning we joined Capt. Burgwin who had marched by a shorter route from Embu-

6. Two killed and 6 wounded, in Price's report, which does not estimate enemy losses. *Ibid.*, p. 522.

7. Diego de Archuleta.

8. "The loss of the enemy was about twenty killed and sixty wounded." Price's report, *op. cit.*, p. 523.

do, which was impracticable for carriages. The march of this day was comparatively an easy one. On the next we entered the Taos mountains, where we had to break a road with 3 feet of snow on it. We camped as we had done two nights before on the mountain top. The next morning was intensely cold, and the snow fell fast. Our animals had ate nothing for 24 hours and were nearly exhausted and we had to march 13 miles to reach the nearest ranch or habitation. Twice we lost the road. I really thought the day the most cheerless one I had ever seen. We overcame all obstacles and by sunset entered the valley of Taos. Our waggons were far in the rear, and did not get up that night. I had to sleep without blankets. Mine, as also my provisions, being in one of the waggons. Under other circumstances I would have thought the fare very hard. As it was, I feasted sumptuously on ashcake made of Taos (unbolted) flour, and hog stewed without salt or any seasoning whatever and slept comfortably on a heap of shucks. The next day we entered the town of Don Fernando where Govr. Bent was murdered and we learned that the enemy would make a final stand at the Pueblo town 2- $\frac{1}{2}$ miles distance. We immediately marched to the town; on our appearance the enemy raised a most unearthly yell. We had but a few rounds of ammunition with the guns, and we entertained them for a little while with a few shots and shells. These were answered with rifle balls and frequent yells of exultation. Night coming on, we retired to Don Fernando. The enemy fully believing we were whipped. The night was a busy one for me, as I had all my ammunition to prepare and arrange for the next day's fight, which we were satisfied would be a hard and bloody one. At sunrise we started again for the town. The day was a brilliant one, and about 9:00 A. M. our guns opened upon the town. The strongest point was the church and the enemy seemed disposed to defend it at all hazards. The 6 pdr. and 2 Howitzers were so placed as to sweep all of the faces. The other two to play in front and on the neighboring buildings. Between 10 and 11 A. M. the order to charge was given and Capt. Burgwin and his Dragoons and one Company of volunteers rushed up on one line, the Infantry battalion on another. Our troops reached the church and adjacent walls without losing a man but immediately a deadly fire was opened on them from the church and neighbouring houses. All that our troops could do was to shelter themselves as well as they could behind the walls. Capt Burgwin (a noble fellow) and a Lt. of volunteers⁹ were soon carried off mortally wounded. Five dragoons were dead—and a number of the troops wounded. An attempt was made to cut through the walls of the church (which I will describe) with axes but they were so thick and the fire so deadly that it was found to be impracticable. During all this time I kept up a warm fire at the town, running the guns up within good rifle range.

9. Probably Lt. Van Volkenburg. *Ibid.*, p. 530.

The 6 pdr. was soon afterwards ordered around to that part of the church where our troops had charged and we scattered our grape shot over all the ground from which we were fired on. At 3 P. M. matters stood pretty much as they did immediately after the charge save that our list of killed & wounded had been added to and that our reserve had killed a couple of beeves and cooked some meat for us. An express was then sent off to this place for more troops a 24 Pdr. Howitzer and a large supply of ammunition, &c. In a short time I was ordered to run the 6 pdr. up within 60 yds of the church and breech the wall. I found that a solid shot would not go through the wall which was more than 3 feet thick, but a part of it having been reduced in thickness with axes, I soon made a breech large enough for five or six men to enter abreast. The roof of the church (a flat one, with a heavy covering of earth) was then fired, and I ran the 6 Pdr. up within 30 feet of the breech, and poured grape shot into the church. Lighted shells were also thrown in which bursted handsomely. The order to storm the church was then given. The bursting of a shell in the church was immediately succeeded by a discharge of grape, and the storming party rushed in.¹⁰ So so[on] as we entered we found the smoke and dust so dense, that it was impossible to exist in it unless near the openings, and that the enemy had all retired except from the gallery. As we entered they fled, and were shot down by our troops from the neighboring walls. In 20 minutes we had possession of the church and all the houses in that part of the town and the white flags were flying from the two Pueblo's. These Pueblo's form the residences of the Indians, and are immense, and very strong structures of unburnt bricks, the walls of the lower stories being from 2 to 3 feet thick and capable of resisting our heaviest projectiles. They are 7 stories high, with flat roofs, which are gained by ladders and through which one must enter the buildings, the whole mass is divided into small apartments. I will give you here a cross section of one of the buildings. The bricks of which they and all the houses of this country are built are about 12 inches long 8 wide and 3 thick, and the walls of them offer astonishing resistance to projectiles and if a shot is put through one it makes a hole very little larger than the ball, leaving all the rest of the wall uninjured. It was near dark when we established ourselves in the town and we at once went into quarters for the night, expecting to renew the fight early the next morning. Morning came and with it the old men with the women and children bearing before them their religious symbols and crying, kneeling and begging for mercy and protection. On the previous day I had walked over their

10. "The storming party—among whom were Lieutenant Dyer of the ordinance, and Lieutenants Wilson and Taylor 1st Dragoons, entered and took possession of the church without opposition. The interior was filled with dense smoke, but for which circumstance our storming party would have suffered great loss." *Ibid.*, p. 525.

dead without even an emotion of pity but I was melted almost to tears, at the sight of their women and children reduced to the deplorable condition in which they were. It was determined to spare them, and accordingly we returned in the evening to Don Fernando. We had killed 152 and wounded a very large number.¹¹ The leaders with a single exception were dead or captured, and the Pueblo Indian chiefs assured us that they had been instigated to rebellion by the Mexicans, who had excited their fears and their cupidity by telling them that almost all their property would be taken from them by taxes—and that if they would join them they would partake largely of the plunder. Our force in the fight was 450 and our loss 12 killed and 40 wounded.¹² I was struck directly on the left breast by a rifle ball, and fortunately on a metal button, which doubtless saved my life. The ball shattered the button, struck a small copper powder flask, which it deeply indented, cut through coat, vest and shirts and just broke the skin, and severely bruised. Two days after the fight, Montolla one of the leaders whom we had made prisoner, was tried by a drum head court martial, and sentenced to be hung, which sentence was carried into execution on the 7th inst. in presence of the troops. The principal, and indeed only leader at large, was brought in a prisoner a few days later and unfortunately shot by a Dragoon.¹³ Capt. Hendly was killed at Morotown in a fight with the Mexicans who were defeated.¹⁴ I hope now the insurrection is completely quieted. I fear the annexation of this country was both a moral and a political error. The country in itself is of no value whatever, the only tillable land is that of the valleys which in point of fertility is inferior to our land of the western states, and has to be irrigated. A portion of the country which I have passed over is the most striking in its features of any I have ever seen, evidently volcanic and just what you might conceive the great Arabian desert to become if by some terrible freak of nature it should be rent by chasms and covered with huge angular sand hills. The climate is very different from what I expected. I think the average temperature is lower than I have ever known it in Missouri. The atmosphere is the driest I have ever known. It has rained but once since I arrived here. Before we came here this was regarded as a healthy climate. To us it has been a fatal most fatal one. Price's regiment arrived here about the 1st of October and already they have buried more than one tenth of their number.

11. "... About one hundred and fifty men killed—wounded not known." *Loc. cit.*

12. "Our own loss was seven killed and forty-five wounded. Many of the wounded have since died." *Loc. cit.* By the time Lt. Dyer wrote (Feb. 14), some of the wounded had died.

13. "... Tomas was shot by a private while in the guard-room at [Don Fernando de Taos]." *Loc. cit.*

14. Capt. [Israel R.] Hendley, in Lt. K. C. McKarney's report to Col. Price, in *Ibid.*, pp. 532-533. McKarney and his force then retreated from Mora to Las Vegas.

My health has constantly improved and I am now in better health than I have been for years. I sincerely hope you have improved and that I may at some future day meet you and find you a well man. Make my best regards to the Col. and your sisters. I shall ever remember with much pleasure the many pleasant hours I have spent with you all. Do write often, and when you find anything interesting in a paper send it to me. You know not how greedy we all are here after news.

I was disappointed in going to California but do not regret it.

Your friend

A. B. Dyer

Dr. R. Johnston
Richmond, Va.

P. S. Ask Col. Pickett to tell Andrew Leslie that you have heard from me, that I am well, &c.

You know my aversion to get into the papers. You can show this to our friends.

—A.B.D.

“The Abraham Lincoln Association, First National Bank Building, Springfield, Illinois, solicits information concerning the present private ownership and location of any document composed by Abraham Lincoln, whether or not it has been published hitherto. Documents in public institutions are readily accessible, but many of those held by individuals have not been located to date. The preparation of a complete edition of Lincoln’s writings from original sources will be greatly facilitated by information leading to procurement of photostatic copies of documents held by private individuals. Acknowledgment of assistance will be fully made upon publication.”

Very sincerely yours,
Roy P. Basler.

Students interested in the history of irrigation in the Pecos Valley, New Mexico, will welcome a series of articles on the subject appearing in the *Eddy County News* beginning May 16, 1947. The first article deals with the pioneer citizen and promoter of irrigation development, Francis Galatin Tracy.

Book Reviews

Rocky Mountain Tales. Edited by Levette J. Davidson and Forrester Blake. (Norman: University of Oklahoma Press, 1947. Pp. xi + 302. Illustrations) \$3.00.

In most respects I am an average reader. Like the person reading this review, I try to select first the things most important in my field, hoping that they will be well written, interesting, informative, and rewarding for the time spent on them. But I am also a slothful reader, and when the book arrived I filed it on a desk piled high with other urgent unfinished business, where it only increased the weight on my conscience. It was not until I received a dunning note from the editor of this REVIEW saying, in effect, "The thumb screws are now on: please remit!" that I picked up the book—with private apologies to Professor Davidson—and began to read it. From the moment I read the first page until I sat down to write this review, the book has not been out of my hands. That means it does contain the qualities I like.

In a felicitous and cogent introduction the editors ask themselves the basic question, What is there in this Rocky Mountain land that it should grip men's hearts in spite of distance and the blackest times of war? Here is part of their answer:

In the south, perhaps, it is color, the canyon red and mountain green, the yellow valley malpais, the blue of a fathomless sky. There the Rio Grande, Pecos, and Chama roll down from peak sources, meeting first the mesa country below Jemez and Sangre de Cristo ranges, flowing through lava gates and coming at last to desert and the straight New Mexican plateaus spiked with solitary mountain masses which lead out to Texas plains. Along these rivers are Indian pueblos, dun-colored, blending naturally with the earth; Spanish towns, bright with pepper strings and blue windows and doorways; American towns of brick and white stone, rising above their more ancient neighbors. . . . In the north, perhaps, it is shadow and whiteness, the dark of montane forests, the quartz gleam of snow fields below peaks. . . . Valleys here are tall-grass valleys; meadows are park-land, quiet sub-alpine places marked with crystal pools; ridges are spur lines, evergreen juts, sanctuary for the shyest living thing. . . . Between

desert and northern snow lies Colorado, Rocky Mountain core. . . . In this red central land, range on range the Colorado Rockies rise, bastioned, tumultuous, massive granite fists allied with storm and space to beat the travelers back.

To these scenes the book brings the reader, for *Rocky Mountain Tales* is a collection of historical sketches, memoirs, personal anecdotes—some short and some tall—selected from published sources and from popular tradition. Footnotes and index provide helpful documentation, and as one reads quickly the excerpts written by Marcos de Niza, Zebulon Pike, De Smet, Gunnison, Chittenden, Humfreville, and others all the way to Andy Adams, one is pleased by the variety of literary styles and impressed by the diversity of personalities they represent.

The folk characters Jim Bridger and Sergeant O'Keefe receive the greatest attention and space. Sergeant O'Keefe, peerless prevaricator of Pike's Peak in the seventies and eighties, spread more yarns than the United States Signal Corps could intercept or verify. And Jim Bridger, Indian fighter, interpreter, guide, trapper, naturalist, and raconteur, was an all-around blue ribbon Munchausen. Then there is *fofarraw* (i. e., "Flashy talk, cabin or rendezvous life, high-built, roaring fires and trappers lolling back, stars and a white chalk moon overhead, and Rocky Mountain yarns"). The book contains plenty of that, and also tales of the overland trails, pony express riders, stage drivers, fabulous mines, buried treasure, and hoaxes. Much is said of mountain men and other monsters.

It is good to read of these roaring men. But one wonders why there are no Rocky Mountain tales about buxom females as well. Except for mention of one Silverheels, a sullied lady of tender feelings, and a shy lass called Sagebrush Nance, the collection represents a man's world. One notices also the absence of lore important in the lives of some of the men presented; for example, there is nothing about Jim Bridger's famous feud with Brigham Young. But such faults of omission are usually found with collections of this kind. Certainly the editors cannot offer everything that

every stray reviewer may happen to have on his mind. But enough is enough, and the eight mediocre illustrations do not add much to the book except pages. Nevertheless, the buyer will still get more than his money's worth. For Professor Davidson and Mr. Blake know their Rocky Mountain West and know how to present it; and I, an average reader as busy as Chaucer's Man of Law, know the region better and appreciate it more for having read *Rocky Mountain Tales*.

University of Utah

HECTOR LEE

Children of the People. Dorothy Leighton and Clyde Kluckhohn. (Cambridge: Harvard University Press, 1947. Pp. xi + 277) \$4.50.

In the analysis of any society, one of the first prerequisites is that the approach be impartial, if it is to have any lasting value. This characteristic is one of the outstanding qualities of the present book. Here we have the Navaho Indian culture portrayed with apparent understanding and fairness, and without romantic embellishments. Although this work is in a sense a companion volume to *The Navaho*, previously published by the same authors, it can be read quite independently of the latter.

The book has been written as part of the Indian Education Research Project and consists of two main sections. Part I, "The Individual and His Development," gives an account of Navaho experiences and training from the time of birth and life on the cradle board (which is still widely used), through the days of old age. The second part, "Testing the People's Children," presents the results of mental and physical tests given to a selected group of Navaho children, of ages six through eighteen.

The reader, upon finishing these pages, feels that, to some extent at least, he really knows the Navaho people (insofar as this is possible without actually living among them). He feels that, if suddenly placed in their midst, he would respect them, and could act so as to be himself respect-

ed. He realizes that there are great individual differences among Navahos; that their problems are complex and constantly changing; that most Navahos cherish some very irrational beliefs—just as most of us in other societies have irrational beliefs of other kinds; that in certain respects the Navaho way of life is, by the standards of others, highly inefficient. On the other hand, he is ready to admit that this strange culture is, in some ways, in advance of his own. The above points, in part conclusions from the data, and in part reactions of the reviewer (and probably of other readers as well), testify by the forceful impression they make, to the skill of the writers in interpreting this Indian culture to outsiders.

Where the authors analyze Navaho customs and personality in general terms, a really excellent job has been done. However, where attempts have been made to apply more precise methods to this task, and to compare behavior patterns in Navaho and white cultures, the results are somewhat disappointing. For example, chapters seven and eight, those dealing with "attitudes," "interests," and "personality traits," leave one with the feeling that much energy has been expended for meager returns. One improvement that could easily have been made, would have been to indicate the numbers of cases on which percentage figures were based. This was not done in the chapters mentioned, with the consequence that it is not possible to attach any definite significance to the group differences cited. But in general, where descriptions of personality patterns seem to yield few significant findings, this does not represent a failing on the part of the authors. It is due, rather, to the undeveloped status of personality testing, the inapplicability to Navaho culture of a few more or less exact personality measures which do not exist, and to the methodological difficulties of comparing personality patterns in different societies. The authors would undoubtedly be among the first to point out that such analyses abound in obstacles, and would probably choose to justify their enormous labor by the fact that they have at least made a beginning toward the clarification of

this problem. Thus, there can be arguments both for and against the procedure adopted. However, some persons might feel that if relatively exact measuring instruments are to be used, there would be considerably greater returns for time invested if the tests were first standardized for the society being studied, even though this would require additional work.

There are a few points which, to the reviewer, appear as slight blemishes on an otherwise scholarly and vitally interesting treatment. In a few of the descriptions of native customs and behavior the statements seem repetitious. Several references to the relative importance of the first few years in child development (pp. ix, 30-31, 111) seem in a measure contradictory, and in part, go beyond evidence now available. One might question the assertion (p. 32), "Navaho practice tends to make children better able to look after themselves, so far as the external world is concerned." The question (p. 41) concerning the times at which "each aspect of the Navaho view of life is . . . 'built in' to the child," seems quite untestable considering the individual variability and the long time intervals involved in the learning of cultural behavior patterns, which, in turn, are probably never static. In the discussion of the study of Navaho children by the Rorschach and Thematic Apperception Tests (p. 128), the statement that, "the basic patterns of their individual personalities were clearly revealed," may convey a false impression as to the exactitude of these methods.

The above criticisms, however, are quite minor when one considers the quality of the book as a whole. The authors should be commended for having been critical in forming conclusions, and in having left many questions open, rather than yielding to the temptation of making more sensational statements in the absence of sufficient evidence.

In view of the previous statements concerning difficulties in obtaining quantitative estimates of personality traits, it should be pointed out that the authors have achieved considerable success in presenting a convincing "non-quantitative" treatment of the interplay between personality and cul-

tural heritage for the Navaho society as a whole, and for certain selected Navaho communities. Another outstanding contribution of the book lies in its description and keen analysis of Navaho child training, which is in so many respects different from that generally found in other American communities.

In this volume, the cultural anthropologist, the social psychologist, and the sociologist will find material useful as a background for further studies, and anyone who hopes to work with the Navahos or with their problems will doubtless agree that here is an important guide. The general reader will value the book for such things as the light it sheds on the origin of superstitions, the useful insight it gives into methods of child training, and the sympathetic picture it presents of a highly interesting group of people.

ALFRED B. SHAKLEE

University of New Mexico

ERRATA

Page 103, *for* L. J. Miles *read* D. S. Miles.

Page 260, line 7, *for* S. T. North *read* S. I. North

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